

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

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

**AGAINST M/s. TIME CAPITAL LTD., BROKER OF NATIONAL
STOCK EXCHANGE OF INDIA LTD. SEBI REGN. NO. INB230771832**

Date of hearing: August 10, 2006

Appearances

Notices : Ravikumar Varanasi, Advocate
Manoj Mittal, General Manager, Time Capital Ltd.

For SEBI : Shri P.K. Kuriachan, Chief General Manager
Shri J. Ranganayakulu, Legal Adviser
Ms. Kshama Chavan, Legal Officer

ORDER

**(UNDER REGULATION 13(4) OF SEBI (PROCEDURE FOR HOLDING
ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY)
REGULATIONS, 2002 M/s. TIME CAPITAL LTD., BROKER OF
NATIONAL STOCK EXCHANGE OF INDIA LTD. SEBI REGN. NO.
INB230771832)**

1.0 Background

1.1 M/s. Time Capital Limited (hereinafter referred to as “TCL”) is a member of the National Stock Exchange of India Ltd. (hereinafter referred to as “NSE”) and is registered with the Securities and Exchange Board of India (hereinafter referred to as “SEBI”) as a stock broker under Section 12 of the Securities and Exchange Board of

India Act, 1992 (hereinafter referred to as “the Act”) with registration number INB230771832.

- 1.2 During December 2002, SEBI conducted an inspection under Regulation 19 of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as the “Stock Brokers Regulations”) of the books of accounts, documents and other records maintained by TCL for the period from April, 2000 to December 27, 2002.
- 1.3 Certain irregularities/contraventions of SEBI regulations were observed during the said inspection. A copy of Inspection Report was sent to TCL on April 23, 2003 for its comments. TCL submitted its reply to the said letters vide its letter dated May 5, 2003.

2.0 Appointment of Enquiry Officer

- 2.1 Pursuant to the inspection, SEBI appointed an Enquiry Officer, vide order dated July 7, 2003, 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 TCL.
- 2.2 The Enquiry Officer issued a show cause notice dated November 18, 2003 in terms of Regulation 6(1) of the Enquiry Regulations, to TCL. The show cause notice issued to TCL provided the details of the provisions of law and the violations alleged to have been committed by TCL. TCL was given an opportunity to submit its reply within 21

days from the receipt of the said notice. TCL was also advised to indicate as to whether it desired a personal hearing. TCL vide its letters dated December 15, 2003 and February 24, 2004 replied to the said show cause notice.

2.3 After giving several opportunities of hearing before the Enquiry Officer, Shri Arun Kumar Jain, Managing Director, TCL appeared before the Enquiry Officer on July 9, 2004 and reiterated the submissions made vide TCL's replies dated December 15, 2003 and February 24, 2004.

2.4 After completion of enquiry, the Enquiry Officer submitted his report dated April 15, 2005 and recommended a minor penalty of suspension of certificate of registration for a period of one month.

3.0 Show Cause Notice and Reply

3.1 Based upon recommendation of the Enquiry Officer, a show cause notice dated April 25, 2005 was issued to the TCL under Regulation 13 (2) of the Enquiry Regulations asking it to show cause as to why the penalty including penalty as recommended by the Enquiry Officer should not be imposed upon it. A copy of the Enquiry Report was also forwarded with the said show cause notice. The said show cause notice was served on TCL through NSE.

3.2 TCL vide its letter dated May 18, 2005, replied to the aforesaid show cause notice. An opportunity of personal hearing was granted before me on July 13, 2006 at Regional Office of SEBI at New Delhi. However, the TCL did not appear for hearing on the said date. The

next hearing was fixed on August 10, 2006 at SEBI Head Office, Mumbai. Shri Ravikumar Varanasi, Advocate and Shri Manoj Mittal, General Manager, Time Capital Ltd. appeared and made submissions in brief. TCL vide its letter dated August 21, 2006 made further written submissions.

4.0 Consideration of Issues

4.1 I have carefully considered the Inspection Report, the Enquiry Report, the show cause notice issued to the TCL and the reply of TCL. My findings are as under:

4.1.1 Non-maintenance of books of accounts

The Enquiry Officer found TCL guilty of violating the provisions of Regulation 17 (1) of the Stock Brokers Regulations for not maintaining the books of accounts like document register, margin book, order book etc. TCL submitted that since the dealing was mostly in demat shares which did not carry any distinctive numbers, the need for maintaining document register did not arise. Further, it stated that it had maintained settlement records of NSE apart from computer data for the identification of physical shares which revealed distinctive number of shares received and delivered to NSSCL/client. Also the scrip wise document ledger was maintained. Although most of the settlement take place in demat mode, it does not altogether do away with the need to maintain a document register which is a statutory register detailing the particulars of shares received and delivered. I am of the view that TCL by not maintaining the Document Register has violated the provisions of

Regulation 17 (1) (g) of the Stock Brokers 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 TCL on behalf of its clients which is a statutory requirement. TCL is expected to maintain Document Register to keep a record of shares and securities held by it.

The Enquiry Officer further found that Margin Deposit Book did not have transaction wise trading details of margins collected by TCL. In response to this TCL submitted that NSE has reprimanded the violation on their action taken report dated November 10, 2002. TCL stated that though a consolidated margin account was being maintained, it admitted that transactions were not separately indicated in the margin account. The contention of TCL that since most of the clients who dealt through them were closely known to the management of the company and had already received sufficient margin from each one of them it was not considered necessary to maintain a separate transaction wise margin book is not acceptable. In this connection, it is relevant to refer to the order dated May 30, 2003 of the Hon'ble Securities Appellate Tribunal (SAT) in the matter of *Radar Securities vs. SEBI* wherein it was held that

“failure to maintain the information on ‘margins’ in the book form cannot be considered as a grave violation of the Regulation to warrant a penalty of suspension of its certificate of Registration when the broker had downloaded the statement from the Exchange computer and kept it in a file. In the absence of any material to suggest that the broker had defaulted in meeting margin liability to the exchange, non maintenance of transaction

wise trading details of margins in book form may be treated as a procedural irregularity.”

I find that TCL has violated the provisions of Regulation 17 (1) (k) of the Stock Brokers Regulations which is a general obligation on the broker to maintain proper books of account, records, etc. I find that TCL has taken a casual approach by not maintaining the margin book separately as required under the regulations. However since it is a procedural lapse on the part of TCL, I am inclined to take a lenient view in this regard.

The Enquiry Officer found that the time of placement of order and time of execution of order were not mentioned in the contract notes. TCL submitted that for the orders received in person, order slips used to be signed and for those received through telephone, order slips were filled up by the operator or dealer and signature was obtained from the clients subsequently. Regarding the maintenance of record of order time, TCL has replied that the same has been maintained electronically. It was further stated that Shri Ravi Gupta, dealer in charge of the south extension branch had absconded and taken various records, ledgers etc. It was stated that Shri Ravi Gupta, had deleted the back up data in the computer and there was no column in respect of time of placement of orders in the standard format given in the capital market regulation of the NSE. The time of execution of a contract on the exchange is reflected in the contract note and trade logs of the exchange.

I note that the time of placement of order by the client and the time of placement of order by the broker into the system are two different

things. As per SEBI Circular dated February 11, 1997, the broker member should maintain record of time when the client has placed the order and reflect the same in contract notes. 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 investors' perspective. The broker is expected to maintain the order book which is an investor protection measure and in the present case I find that the broker failed to maintain the order book as provided by the aforesaid circular. I note that the Hon'ble Tribunal in Appeal no. 367 of 2004 in the matter of *Shubam & Co. vs. SEBI* while dismissing the appeal observed as under:

“As per this circular which is binding on all market intermediaries including the appellant, stock brokers are required to maintain some record where the time when the client places an order must be recorded and the same should be reflected in the contract note along with the time of execution of the order. Admittedly, the appellant has not been maintaining any such record which is usually maintained in a register commonly known as order book. Clause 7 of the circular may appear to be innocuous but it is not so and is very important step which the Board has taken to protect the interest of the investors. In a volatile market like ours where the prices of the scrip fluctuate every moment, it is absolutely necessary that a broker should record the time when it receives an order from a client and also the time when the same is executed. If this is not done the brokers could take the investors (their clients) for a ride and make undue benefit for themselves. It is for this reason that the Board has made it mandatory for the stock brokers to maintain such record. Having issued the circular the Board would be well advised in ensuring strict compliance thereof by every stock broker so that the interest of the investors do not get jeopardized.”

However I note, there is no material to suggest that the broker is maintaining record of time when the client has placed the order. Therefore, there is no compliance of Circular dated February 11,

1997. However, in the absence of client complaints, this may be treated as a procedural irregularity.

4.1.2 Contract notes not having pre printed serial numbers.

The Enquiry Officer found that the contract notes did not have pre printed serial numbers which is in violation of the SEBI Circular no. SMD/MDP/CIR/043/96 dated August 5, 1996. I have noted TCL's submissions that the contract notes were issued giving complete details such as order number, trading number, trade time, quantity, etc. Further, TCL stated that the four contract notes favouring J Bhattacharjee & Co. dated February 20, 2001, February 21, 2001, February 27, 2001 and February 28, 2001 have not been issued by TCL and the same were fake and fabricated papers printed on stolen stationary of the company. It was further submitted that there was neither any transaction entered at NSE terminal nor found recorded in the TCL's books of account. It also stated that this fact was mentioned in the FIR dated April 03, 2001. Taking into account the submissions made by the TCL and after going through the facts of the matter, it is not conclusively established that TCL had violated SEBI Circular No. SMD/MDP/CIR/043/96 dated August 5, 1996. I accept the explanation of TCL as there is no evidence as to violation of the said circular.

4.1.3 Acknowledgement of the clients was not obtained on the duplicate copies of the contract notes

As regards, the allegation that acknowledgement of clients was not obtained on duplicate copies of contract notes, TCL submitted that

some of their clients viz., Shri O.P.Gupta, Shri Atma Ram Gupta and Shri Avinash Agarwal to whom the impugned contract notes were issued have confirmed by filing affidavit that the company was following the practice of issuing contract notes to the clients on the same day after trading hours and the same were also delivered within 24 hours. I agree with the findings of the Enquiry Officer that it is merely a lapse on the part of the clients that they have omitted to put the date along with their signatures on some of the contract notes. I accept the submission of TCL and I am inclined to take a lenient view in this regard.

4.1.4 Irregularities in the member and client agreement

The Enquiry Officer found that the stamp paper pertaining to Shri K.L. Sethi was not of proper denomination. It was observed that the client agreement signed with Shri K.L. Sethi was dated July 15, 1997 but the stamp paper was dated March 31, 1999. TCL submitted that since the original agreement was on a deficit stamp paper, it was rectified subsequently. I am inclined to take a lenient view in the matter as it is a procedural difficulty.

As regards the clients, Sarita Singh and Pawan Goyal, TCL has not accepted the relevant documents since they are their DP account holders and therefore the necessary proof was obtained as a DP holder. I agree with the finding of Enquiry Officer and accept TCL's submission.

In the matter of M/s. Ityadi Finance, it was submitted that supporting documents of final accounts, etc. were obtained at the

time of commencement of business and there was no requirement to obtain the same annually. TCL submitted that the matter has been adjudicated and penalty has been imposed by NSE. Further the client has discontinued the business and therefore no rectification could be done. I am therefore inclined to take a lenient view.

4.1.5 **Dealing with unregistered sub brokers**

The Enquiry Officer found that TCL had dealt with unregistered sub brokers in violation of SEBI Circular No. SMD/1/3/118 dated December 27, 1993, SMD/OPG/AA/1020/96 dated March 3, 1996, SMD/MDP/CIR/43/96 dated August 5, 1996 and SMD/POLICY/CIR/03/97 dated March 31, 1997. The details given are below :

Sr. No	Sub-broker	Date of registration with SEBI	Transacting since
1	Super Financial Services	10.07.2002	01.04.2000
2.	P.S. Share Trades	21.03.2002	22.09.2000
3.	NR Investment	13.08.2002	01.01.2001
4.	G.D. Investments	21.03.2002	03.04.2001
5.	S&S Capital Services	10.07.2002	23.10.2000

With regard to instances of installation of VSATs at unauthorized premises, I note that the Enquiry Officer has found that TCL continued dealing with the following entities even when the applications of the following sub-brokers were rejected by NSE namely, Mudra Portfolio, Grow up Finance, Mohini Capital Services Ltd. and Timely Investment.

Sr.No	Sub-broker	Remarks
1. I t w a s	Mudra Portfolio	Application for registration was forwarded to NSE only on February 21, 2001 which was returned asking to rectify the deficiencies. However, VSAT charges were levied for August 15, 2000 and March 21, 2001. Broker continued dealing with the entity till December 2001.
2. a l I t	Grow up Finance	Application for registration was forwarded to NSE on February 21, 2001 which was returned asking him to rectify the deficiencies. However, VSAT charges were levied for June 30, 2000, September 30, 2000 and March 21, 2001. Broker continued dealing with the entity till February 2002.
3. w a s	Mohini Capital Services Ltd.	Application of registration was forwarded to NSE on February 21, 2001 which was rejected by NSE. However, VSAT charges were levied for March 21, 2001. Broker continued dealing with the entity till October 2001.
4. o u n d	Timely Investment	Application for Registration was forwarded to NSE on May 19, 2000 which was rejected by NSE. However VSAT charges were levied for December 30, 2000 and March 21, 2001 and broker continued dealing with the entity till March 2002.

It was found that TCL dealt with the following entities without an application for registration as sub broker with SEBI. The details of VSAT charges as per their ledger statements are given below :

Sr.No	Sub Broker	Date	Transaction (VSAT rent)	Amount
1	New Era Investment	3.12.2000 21.3.2000	Oct to Dec 2000 Jan to March 2000	12500 37500
2	AKG Financial Services Pvt. Ltd.	30.06.2000	Upto June 2000	2500
3.	Prapti Investment	9.12.2000	Upto 09.12.2000 Aug & Sept. 2000	25000 50000
4.	Pramukh Securities	15.05.2000 21.3.2001 26.6.2001 24.8.2001	Upto March 2000 Jan to March 2001 April to June 2001 Upto 12.07.2001	2500 37500 37500 8451

The Enquiry Officer has found that in some other cases, TCL had provided VSAT to the entities even when their application for registration was rejected and with others when there was no application made. In respect of 5 sub-brokers, the VSAT were installed at their premises for proprietary trades. In 8 other cases where the application for sub-broker were rejected by NSE, it submitted that these were High Networth Individuals and terminals were installed at their premises for proprietary trades. I further note that TCL has admitted that it had installed terminals for five entities who are not sub-brokers. However I note that the submission of TCL stated that it was for proprietary trades. Further, VSAT's were installed in eight other cases when their application for sub-broker was rejected by NSE. I note that as per SEBI circular dated October 22, 2001, the trading terminals have to be installed at the office/ branch office of the broker and not at the premises of the client. Such a practice makes a system vulnerable to misuse and the risk management system cannot be monitored by the exchange or the

regulator, if the terminal is placed within the premises of a client and not in the premises of the broker.

TCL vide letter dated August 21, 2006 submitted that the VSAT installed at the premises of their clients were withdrawn much before the circular dated October 22, 2001. Further the VSAT's which were installed at other places were the branch offices of the TCL prior to the entities were registered as sub brokers of TCL. Hence there is no violation of having carried out unregistered sub broking activity and also allocating unauthorized terminals. I have also noted that the aforesaid violations had been adjudicated by disciplinary action committee of NSE and that it had stopped dealing with the said entities. It had dealt with certain entities for two years before the date of registration.

TCL vide its letter dated August 21, 2006 submitted that the trading terminals were installed at the branch office of the company and not at the sub brokers premises. I have carefully perused the documents submitted by TCL and note that none of the documents submitted by TCL suggest that they have installed the trading terminals at their branch offices. I agree with the findings of the Enquiry Officer that the facts and circumstances including the imposition of monetary penalty by DAC of NSE on the same set of facts goes to suggest that TCL was dealing with unregistered sub-brokers who in turn dealt for their ultimate clients.

The Enquiry Officer has further found that one such entity viz., Shri J. Bhattacharjee had admitted that he had acted as unregistered sub-

broker and also stated that they had informed TCL that their limited business also included the transactions of their existing client base in Delhi Stock Exchange (DSE). Shri Bhattacharjee further stated that TCL was fully aware of this fact.

I note that Shri Bhattacharjee being a member of DSE, in case he wanted to deal in stocks listed on NSE for his ultimate clients, the proper course for him would be to become a sub-broker of TCL who is a member of NSE. By not registering Shri Bhattacharjee as a sub-broker and executing a number of transactions for him, TCL has violated the provisions of SEBI regulations and circulars by dealing with a unregistered sub-broker which is very serious in nature and hold him guilty of violating the aforesaid provisions of SEBI Regulations and Circular.

After going through the chronological events, I hold TCL guilty of violating the aforesaid SEBI circular dated October 22, 2001, in installing trading terminals at unauthorized places. The trading through these terminals for a number of entities gives rise to a reasonable inference that the broker did not act diligently and in good faith when he traded for these unregistered sub-brokers which constituted a significant percentage of its volumes at the exchange.

4.1.6 Non Segregation of clients funds and own funds :

The Enquiry Officer found that TCL deposited cash and cheques received from clients in its own account instead of depositing the same into their client's account thereby violating the SEBI Circular dated November 18, 1993. TCL by referring to Annexure (G&H)

dated July 8, 2004 of its reply submitted that the client account contained brokerage for Rs. 26584100 and the show cause notice alleges that Rs. 9576732 being the amount of client's funds credited in the broker's own accounts. The calculation of brokerage income is based on Annexure H to their reply including Service Tax Payment. As the amount of the alleged non-segregation of the clients funds of Rs. 9576732 is much less than Rs. 26584100 which is the brokerage income held in the clients' account but belonging to the broker the question of non segregation and misuse do not arise. TCL further submitted that NSE had already imposed a penalty of Rs.15000 in this regard. TCL further stated that it did not utilize the clients money for its own purpose. I note that the amounts to the credit of clients' accounts are in the nature of trust. The funds in the clients' account cannot be applied for any purpose other than what is permissible under SEBI Guidelines. The objective of opening and maintaining a separate account for the clients' funds is to segregate and identify them separately and to prevent its misuse so that they are beyond the reach of the broker. There is no segregation between clients' funds and own funds and all the income and expenditure are met from the general account. This is in violation of SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993 and Regulation 26 (xiii) of Stock Brokers Regulation.

4.1.7 Delay in making payment and deliveries

The Enquiry Officer found TCL had delayed making payments and delivery of securities and hence was guilty of violating the Stock Broker Regulations and SEBI Circular dated November 18, 1993. As regards, delay in making payment to the client Ms. Lata Goyal, it

was submitted that it was done at the request of the client to make future purchases and an affidavit to this effect is also filed by the client. As per the show cause notice dated November 18, 2003, 14 instances of delayed payment/delivery have been mentioned. I find that the broker vide his reply dated July 8, 2004 submitted that there was a delay of 1 to 2 days in delivering the securities to the clients. I further note that they have delivered all the securities within the stipulated time of 48 hours. In all instances delivery to the clients has been effected on the same very day of the pay out by the NSCCL. To confirm the payment made to the clients, the broker has enclosed the NSE settlement schedule which shows the actual pay out dates from which it is observed that there were no delays in delivery of securities to the clients. I am inclined to take a lenient view in this regard.

4.1.8 Due Diligence

As regards the allegation that TCL had not exercised due care and diligence for the transactions with M/s J Bhattacharjee & Co., member of DSE, TCL submitted that these transactions are disputed transactions for which both civil and criminal cases are pending. It further submitted that the complainant Shri Bhattacharjee had filed a civil suit in Delhi High Court in respect of the same transactions for recovery of money etc. and therefore these transactions are both subject matter of arbitration proceedings as well as civil suits besides the criminal case or offence under the Indian Penal Code. I agree with finding of the Enquiry Officer that these transactions arise out of the same set of facts which are the subject matter of criminal and civil proceedings including arbitration proceedings and hence it

would not be appropriate to deal with these issues in the present proceedings.

4.1.9 On a careful perusal of the charges and the findings recorded above, several irregularities were noticed in the inspection of TCL particularly with reference to the installation of trading terminals at unauthorized places and dealing with unregistered sub brokers where either the application was rejected by NSE or no application for registration was even made. Further TCL had also allowed 5 sub brokers to trade even prior to grant of certification of registration by SEBI. As a member of NSE, TCL should have been aware of the rules / regulations and byelaws of the stock exchange. The prime responsibility of the broker is to secure the proper installation of its terminal at the authorised places namely at their branch offices or at the office of the sub broker with whom it is registered. Further mere submission of application to NSE is not enough on the part of the broker to justify / grant of trading terminal to the sub broker. Moreover it is the responsibility of the broker and the sub broker to ensure that the application has been processed and that the sub broker has been registered with SEBI and hence can act on behalf of the broker. In view of the statutory provisions, TCL should not have allowed the sub broker to trade on behalf of their clients. I note that TCL has been penalized by the NSE for violating the byelaws of the Stock exchange too. Considering that there are no other investor complaints against TCL, I direct TCL to be cautious in future and an imposition of penalty of censure, would be adequate to meet the ends of justice.

5.0 ORDER

5.1 Now, therefore, in exercise of powers conferred vide Regulation 13(4) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, I hereby “Censure” Time Capital Ltd., Member of National Stock Exchange (INB 230771832). I also direct TCL to note that any instances of violations or non-compliance of the provisions of Securities and Exchange Board of India Act and the Rules and Regulations framed thereunder, in future, shall be dealt with stringently.

Place : Mumbai

Date : 17/09/2007

T.C.Nair
Whole Time Member
Securities and Exchange Board of India