

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

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

**AGAINST M/s. J BHATTACHARJEE & CO, MEMBER, DELHI STOCK
EXCHANGE ASSOCIATION LTD., SEBI REGN. NO. INB 050087511**

Date of hearing : July 13, 2006

Appearance

For Noticee : Shri J. Bhattacharjee

For SEBI : Shri P K Kuriachan, Chief General Manager

ORDER

**UNDER REGULATION 13(4) OF SEBI (PROCEDURE FOR HOLDING
ENQUIRY OFFICER BY ENQUIRY OFFICER AND IMPOSING PENALTY)
REGULATIONS, 2002 IN RESPECT OF M/s. J BHATTACHARJEE & CO,
MEMBER, DELHI STOCK EXCHANGE ASSOCIATION LTD., SEBI
REGN. NO. INB 050087511**

1.0 Background

1.1 M/s J. Bhattacharjee & Co., (hereinafter referred to as “JBC”) is a member of Delhi Stock Exchange Association Ltd. (hereinafter referred to as “DSE”) and is registered with 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 INB050087511.

1.2 In April 2004, SEBI received a complaint from J. Bhattacharjee & Co. against M/s. Time Capital Ltd., (TCL) member of National Stock

Exchange of India Ltd. (NSE) regarding illegal and malafide refusal to return the funds and shares aggregating to Rs. 93,52,325.50 placed under ALBM. The complaint was taken up with NSE for redressal. NSE after a joint meeting with TCL and JBC advised for arbitration as the matter could not be administratively resolved.

- 1.3 Central Vigilance Commission (CVC) through the Ministry of Finance (MOF) referred the complaint to SEBI and accordingly SEBI referred the matter to NSE for further examination and reply. NSE was advised to inspect the books of TCL. NSE informed that JBC was dealing with TCL, on behalf of his clients without having valid registration as a sub broker.

2.0 Enquiry Proceedings

- 2.1 In view of the above, 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 violation committed by JBC. The Enquiry Officer issued a show cause notice dated October 24, 2003 in terms of Regulation 6(1) of the Enquiry Regulations.
- 2.2 The said notice provided the details of the provisions of law and the violations alleged to have been committed by JBC and also calling upon it and explain why the penalty should not be recommended for aforesaid violations. JBC was also advised that if it desired a personal hearing it may indicate the same and was given an opportunity to submit its reply within 21 days from the receipt of the said notice. JBC

vide its letter dated November 18, 2003 replied to the said show cause notice.

- 2.3 On completion of the enquiry, the enquiry officer submitted his report recommending a minor penalty of suspension of the certificate of registration for a period of 10 days.

3.0 Show Cause Notice and JBC's submissions

- 3.1 Based upon recommendation of the Enquiry Officer, a show cause notice dated April 25, 2005 was issued to JBC under Regulation 13(2) of the Enquiry Regulations asking it to show cause as to why the penalty as considered appropriate by the Enquiry Officer should not be imposed on it. A copy of the enquiry report was also forwarded to JBC with the said show cause notice.

- 3.2 Vide letter dated May 11, 2005, JBC replied to aforesaid SCN and interalia submitted that:

1. *JBC's sub broker registration with SEBI was not initiated by TCL inspite of following up continuously with TCL.*
2. *If TCL has any reservation about JBC's doing trades for its clients through them, TCL should have stopped their dealings with JBC and its firm. The onus of forwarding JBC's sub brokership registration application to SEBI was entirely of TCL and JBC was in no position, either legally or administratively to obtain registration of sub brokership on its own .*
3. *There was no complaint against JBC by a single client for any breach of rules/regulations for any impropriety of any sort.*

- 3.3 An opportunity of personal hearing was granted to JBC before me on July 13, 2006 at Regional Office of SEBI, New Delhi. Shri Bhattacharjee attended the said hearing and made submissions.

4.0 Consideration of Issues

- 4.1 I have carefully considered the enquiry report, the show cause notice issued JBC and its reply. My findings are as under :
- 4.2 The Enquiry Officer found that JBC though being a member of DSE, nevertheless executed transactions in securities for clients at NSE of which he was not a member through M/s. Time Capital Ltd, member of NSE without obtaining registration as a sub broker from SEBI which is in violation of section 12 of SEBI Act, 1992 read with Rule 3 of SEBI (Stock Brokers and Sub Brokers) Rules, 1992 and SEBI Circular No. SMD/POLICY/CIR-3/98 dated January 16, 1998.
- 4.3 As regards the allegation that JBC had acted as an unregistered sub broker, it appears that it has not denied the same but has put the entire onus on the main broker, TCL through whom it has acted as a sub broker to get the certificate of registration as a sub broker from SEBI. JBC submitted that the prime responsibility of obtaining registration of sub brokership is that of the main broker through whom the client sub broker carries its business. It further stated that all applications for SEBI Registration of sub brokers have to be routed through the main broker, TCL (in the instant case) to whom the sub broker is affiliated and therefore JBC is not responsible for not being registered as a sub broker. JBC has further stated that it had repeatedly asked TCL to complete this formality but for the reasons best known to them, they did not do so.
- 4.4 I note that SEBI vide its circular No. SMD/Policy/Cir-3/97 dated March 31, 1997 and SEBI/SMD/Policy/Cir 3/98 dated January 16, 1998 mandated that the members of one exchange for dealing through

members of another exchange have to necessarily register themselves as sub brokers of the other member. It is true that the broker transacting for sub brokers on NSE has to ensure that the sub broker is registered with SEBI. It cannot altogether be said that the sub broker who is dealing with the main broker has no responsibility to get himself registered with SEBI as a sub broker of TCL. In the present case, JBC, a broker of DSE is expected to know that before he executes transactions for its clients on the exchange other than DSE through other brokers has to necessarily get himself registered as sub broker of the broker concerned through whom it is transacting for its ultimate clients. Not doing so would be prejudicial to the interests of investors who deal with such unregistered sub brokers besides not being in conformity with the law.

4.5 Reference is drawn to Section 12 of the SEBI Act, which states as under:

“No stock broker, sub broker, ...and such other intermediary who may be associated with the securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act.”

Apart from the above, I note that circular dated March 31, 1997 inter alia states as under :

“No broker shall deal with a person who is acting as a sub broker unless he is registered with SEBI. It shall be the responsibility of the broker to ensure that his clients are not acting in the capacity of a sub broker unless he is registered with SEBI as a sub broker or his recognized by the stock exchange as a remisier.”

The subsequent circular dated January 16, 1998, inter alia states as under:

“It has been decided that the members of the stock exchange executing transactions of their clients through the members of other exchanges are to be treated as a sub broker. In terms of Rule 3 of SEBI (Stock Brokers and Sub brokers) Rules, 1992, read with Section 12 of the SEBI Act, no stock broker or sub broker shall buy, sell and deal in securities unless he holds a certificate granted by the Board under the regulations. Thus, it is necessary for any person who acts as a sub broker to hold a certificate of registration as a sub broker granted by SEBI and accordingly the members of the stock exchanges who also act as sub brokers should hold a separate registration with SEBI as a sub broker. However, presently some of the members of exchanges who are acting as sub brokers through the members of other exchanges have not obtained separate registration from SEBI to act as the sub brokers.”

- 4.6 From the above, it is apparent that there is contributory negligence on the part of JBC in not obtaining a certificate of registration as a sub broker under section 12 of the SEBI Act. Further, I note that while the first circular puts the onus on the broker to ensure that his clients are not acting as unregistered sub broker, the second and subsequent circular mandates that it is for the entities acting as a sub broker to register themselves as sub brokers if they act through members of the other stock exchanges for their clients. In the present case, JBC being already a member of DSE cannot plead ignorance of the subsequent circular issued by SEBI which does not permit an existing broker to execute transactions through members of other stock exchanges of which it is not a member unless it is registered as a sub broker of the member of that other exchange. JBC in case wanted to deal in stocks listed on NSE for his ultimate clients as it actually did, the proper course for it would be to become a sub broker of TCL or any other member of NSE for that matter.
- 4.7 After perusal of the annexures to the show cause notice, I find that the sub broker had dealt for about 75 clients (other than his proprietary

trades) through TCL, for transactions at NSE without being registered as a sub broker of TCL. The contention of JBC that the onus of forwarding JBC's sub brokership registration application to SEBI was entirely of TCL and JBC was in no position, either legally or administratively to obtain registration of sub brokership on its own is not acceptable. Though the application of the sub broker has to be routed through the broker, the sub broker cannot undertake any trading activity for its client unless he is registered as a sub broker of that main broker and has obtained certificate of registration from SEBI. It is observed that inspite of being aware of the aforesaid SEBI circulars, JBC acted as a unregistered sub broker and has violated section 12 of SEBI Act, 1992 read with Rule 3 of the SEBI (Stock Brokers and Sub Brokers) Rules, 1993 and the SEBI circulars cited on the subject. JBC as a broker of DSE is expected to know that before he executes transactions for his clients on a exchange other than DSE through other broker, it has to necessarily get registered as sub broker of that other broker through whom it is transacting for its ultimate clients. Not doing so would be prejudicial to the interests of the investors who deal with unregistered sub brokers besides not being in conformity with the law. In case of any default by the unregistered sub broker, the clients will have no recourse for recovery of the dues from the main broker under the exchange rules and regulations. After carefully going through the facts and circumstances of the case, I am of the view that a penalty of censure would be sufficient 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 impose a minor penalty of Censure on J. Bhattacharjee & Co., SEBI Registration No. (INB 050087511). I also direct J. Bhattacharjee & Co. to note that any instances of violation or non compliance of the SEBI Act and Rules and Regulations in future shall be dealt with stringently.

Date: 17.09.2007
Place: Mumbai

T. C. Nair
Whole Time Member

Securities and Exchange Board of India