

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: G. ANANTHARAMAN, WHOLE TIME MEMBER.

ORDER UNDER REGULATION 13(4) OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002 AGAINST M/S APS CAPITAL SERVICES PVT LTD, MEMBER, PUNE STOCK EXCHANGE LTD.

- 1.1 M/s APS Capital Services Private Limited (hereinafter referred to as the Broker), Member, Pune Stock Exchange Limited (for short, PSE) is registered with Securities and Exchange Board of India (for short, SEBI) as a stock broker (registration number INB111015931). The Broker is also a sub-broker affiliated to PSE Securities Limited (Member, National Stock Exchange of India Limited and Bombay Stock Exchange Limited)
- 1.2 SEBI, vide order dated October 30, 2002 appointed an auditor viz. M/s Varma & Varma (for short, the Inspecting Authority) to conduct an inspection of the books of accounts, documents and other records of the Broker for the period April 2000 to November 2002, in terms of the provisions of Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992 (for short, Broker Regulations). The Inspecting Authority, vide report dated February 01, 2003 inter alia made the following observations:

- i) The client registration forms (for the clients added during the period April 01, 2000 to June 30, 2002) were not available with the Broker.
- ii) The Broker did not collect margins from some of its clients.
- iii) The clients did not acknowledge the duplicate of the contract notes.

2.1 A copy of the aforesaid inspection report was forwarded to the Broker for its comments by SEBI, vide letter dated March 26, 2003. The Broker, vide letter dated May 17, 2003 filed its comments to the said inspection report. Thereafter, an Enquiry Officer was appointed by SEBI vide orders dated March 10, 2004 and February 11, 2005 under the provisions of Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (for short, Enquiry Regulations) to enquire into the alleged irregularities (observed during the inspection) committed by the Broker. A notice dated December 31, 2004 was issued to the Broker under the provisions of the Enquiry Regulations. The Broker submitted its reply to the said show cause notice and the Enquiry Officer after conducting the proceedings in terms of the Enquiry regulations, vide report dated September 11, 2006 recommended a minor penalty of suspension of certificate of registration of the Broker for a period of one week.

3.1 Pursuant to the submission of the Enquiry Report, a notice dated September 14, 2006 was issued to the Broker by SEBI, in terms of provisions of the Enquiry Regulations calling upon it to show cause as to why appropriate penalty including the penalty as recommended by the Enquiry Officer should not be imposed on it. The Broker vide letter dated

September 21, 2006 inter alia stated that the lapses which were observed during the inspection had since been rectified and therefore, the very purpose of the inspection had been carried out by it. The Broker further stated that 513 clients were registered through it at PSE Securities Ltd. and that the majority of back office functioning was taken care by the said PSE Securities Ltd. He submitted that PSE had conducted an inspection of the office of the Broker for the period October 01, 2004 to December 31, 2004 and that no violations were observed during the said inspection. The Broker added that, its main source of income, at present, was the sub brokerage received from the said PSE Securities Ltd. It added that the Rules and Regulations of SEBI were strictly being carried out by it.

3.2 SEBI granted an opportunity for hearing to the Broker on November 29, 2006. Shri Arvind R. Shah, director of the Broker appeared before me and made submissions on the lines of its reply dated September 21, 2006. He also pointed out that SEBI had taken a lenient view against various stock brokers who were involved in similar violations. Pursuant to the said hearing, the Broker vide letter dated November 29, 2006 inter alia stated that the lapses observed by the inspecting authority were pertaining to the year 2000 – 2001 and that such lapses had since been rectified by it. According to the Broker, there was no single investor complaint which was reported to SEBI or PSE against it. In view of the above submissions, the Broker requested to waive the recommended penalty.

3.3 I have considered the Enquiry Report, the show cause notice issued to the Broker, the oral as well as written submissions made on behalf of the

Broker and other materials available on record. The Enquiry Officer had observed certain irregularities committed by the Broker such as failure to maintain client registration forms, improper collection of margins, irregularities in the issuance of contract notes, dealings as an unregistered sub broker, improper maintenance of books of accounts, records and documents etc. The observations of the Enquiry Officer were not disputed by the Broker, either in its written reply dated September 21, 2006 or during the time of hearing. The main contention of the Broker was that the lapses which were noticed by the Inspecting Authority were subsequently rectified it. While claiming so, the Broker further requested to take a lenient view.

- 3.4 The Enquiry Officer had inter alia observed that there were several instances of failure on the part of the Broker in the maintenance of the client registration forms for the clients who were added during the period April 1, 2000 to June 30, 2002. I note that, though the Broker had reported to have 205 active clients as on November 16, 2002, it had failed to maintain the client registration form for the clients who started trading through the Broker from April 01, 2000 to June 30, 2002. The Broker could not give any satisfactory explanation in this regard. SEBI, vide circular dated February 11, 1997 inter alia advised the stock brokers to maintain a database of their clients. Subsequently, vide circular dated April 11, 1997, it had once again advised the stock brokers to follow its earlier circular dated February 11, 1997. In its circular dated April 11, 1997, SEBI had further advised that the stock brokers might seek additional information, if any, so as to satisfy themselves about the antecedents of clients and that it would be the responsibility of the stock brokers to provide for client details as and when need arises. The said

requirements had been made in compliance of the Know Your Clients (KYC) norms. In the present matter, the Broker had not entered into the client registration forms in respect of the clients added during the period April 2000 to June 30, 2002. It is one of the primary duties of a stock broker to ensure that he fulfils the primary requirement of obtaining documents such as client registration forms, member client agreements etc. The very purpose of such practice is to enable the stock brokers to evaluate the client before he takes up trading for the clients. Such act of the Broker is in violation of the provisions of SEBI circulars dated February 11, 1997 and April 11, 1997.

- 3.5 I further note that the Broker had not collected adequate margin from some of its clients and that it had executed transactions without having sufficient margin. Some of such clients from whom the Broker had not collected margin (as observed as by the Inspecting Authority) were Shri Amit Motwani, Shri Kubde P.N., National Paper & Chemicals, J.P.B. Investments Pvt. Ltd., Shri Ajay Motwani etc. I note that the Inspecting Authority had found that some of the above clients viz. Shri Amit Motwani, National Paper & Chemicals and Shri Ajay Motwani had huge debit balances as on March 31, 2001, March 31, 2002 and November 30, 2002. The Broker could not give any satisfactory explanation in this regard, even before the Enquiry Officer. In terms of SEBI circular dated February 04, 2000, a stock broker was mandatorily required to collect margin, where the margin in respect of a client in a settlement worked out to be more than Rs.1,00,000/-. The collection of margins is a risk containment measure. In case of default by the client in making the payments, the same (default) is met with the security deposit, collected in the form of margins. It is important to note here that the Broker had

failed to enter into client registration forms with the clients who were added during the period April 01, 2000 and June 30, 2002. In such a scenario, transactions on behalf of clients without client registration forms and without adequate margin can not be taken lightly in the interest of securities market. Therefore, it is fairly established that the Broker had violated the SEBI circular dated February 04, 2000.

3.6 I further note that the Broker had committed irregularities in the issuance of contract notes. The Inspecting Authority observed various irregularities such as, that the duplicate of the contract notes were not signed by the authorized signatories, that written consent of clients in respect of transactions entered into as principal (in respect of certain clients) were not obtained by the Broker, that revenue stamps were not affixed on the original contract notes etc., It was specifically observed that, the Broker had not obtained the written consent (in respect of whom the transactions were entered into as principal) of certain clients viz. Toor Sheela, Joshi Pratibha and Tembe Manisha wherein the transactions were entered into as principal. SEBI vide circular dated August 05, 1996 inter alia advised that serious view would be taken, in case a stock broker was found to have committed certain deficiencies as stated therein. Some of such deficiencies specified in terms of the said circular (related to contract notes) are the following :

- a. Not having pre-printed serial numbers.
- b. Not issuing contracts in Form B while acting as principal.
- c. Not affixing stamps.
- d. Not maintaining copies of contract notes.
- e. Maintaining counterfoil of contract notes without adequate details.

f. Dispatching contract notes after 24 hours.

3.7 In the present matter, the Inspecting Authority had found various deficiencies of the Broker as pointed out above. A Contract note is a confirmation of trade done on a specific day for and on behalf of a client in the specified format. In case of dispute, the same plays a vital role as it highlights the ingredients of agreement between the client and the stock broker and therefore, a stock broker can not ignore the execution of the contract notes in the specified format. Therefore, it is fairly established that the Broker had violated the provisions of regulation 17(i)(j) of the Broker Regulations read with SEBI circular dated August 5, 1996. Further, the Enquiry Officer had also observed that the Broker had dealt as an unregistered sub broker to stock brokers viz. Sajag and Growever Investments Private Limited. Growever Investments Private Limited had issued contract notes in Form A to the Broker. Besides, the Enquiry Officer had observed that the Broker had admitted that it had acted as an unregistered sub broker. Further, the Broker had admitted before the Enquiry Officer that it had collected relationship management fee at 40% of the brokerage which was none other than the sub brokerage for the volume of business given to Sajag through the terminal provided by the said Sajag to the Broker. It would establish that the Broker had entered into transactions with clients while acting as an unregistered sub broker to Sajag. Despite sufficient opportunities, the Broker failed to give any satisfactory explanation. In terms of SEBI circular dated March 14, 1996, all sub brokers were required to obtain the certificate of registration from SEBI in accordance with section 12 of Securities and Exchange Board of India Act, 1992 (Act) . This was reiterated by SEBI vide subsequent circulars dated January 16, 1998 and January 15, 2001. Therefore, it is fairly established that the Broker had

violated provisions of section 12 of the Act read with the SEBI circulars dated January 16, 1998 and January 15, 2001

3.8 I also note that the Broker had not maintained the books of accounts records and documents as required under regulation 17 of the Broker Regulations. It was observed during the course of inspection, that the Broker had not furnished the business volume for the years 2000-01 and 2001-02 and till the date of inspection. Further, in respect of certain transactions, the counter party stock brokers name was given as 'XYZ', because of which the volume of transactions was difficult to ascertain with. Some of such instances were explained in the Enquiry Report. Thus, it is fairly established that that the Broker had not maintained sauda book, properly. The Broker failed to give any explanation in this regard. It is one of the duties of a stock broker to ensure that all the systems and procedures are in place as specified. He has to ensure that the books of accounts are maintained properly. The inspecting authority also observed that the Broker had not maintained the client ledger properly. Besides, the clients were not provided with proper codes, while the same client code was allotted to different clients, which were in violation of SEBI Circular dated July 18, 2001. Further, the Broker had also not maintained the margin deposit book and thereby, violated regulation 17(1) (k) of the Broker Regulations.

3.9 The Broker has not disputed the off – the - floor transactions executed by it. The said transactions were in violation of SEBI circulars dated March 14, 1995 and September 14, 1999, as observed in the Enquiry report. . The Broker had failed to give any satisfactory explanation in this regard, even before the Enquiry Officer. Further, the Broker had also carried out

certain fund based activities, as observed in the Enquiry Report. Some of such instances are as follows :

Amounts paid to clients (as mentioned below) when the balances in the clients account is 'Nil',:

Date	Client	Amount (Rs.)
20.04.01	Chordia S K	1,00,000.00
05.05.01	Chordia S K	1,00,000.00
2001-02	Ashish Shah	91,274.13
2000-01	Techser Tools Pvt. Ltd.	9,49,406.41
05.04.02	Sanjeev Securities	1,00,000.00
16.04.02	Sanjeev Securities	1,50,000.00
06.05.02	Sanjeev Securities	1,50,000.00

3.10 The above instances clearly establish that the Broker had carried out fund based activities in violation of Rules 8(1) (f) and 8(3) (f) of Securities Contract (Regulations) Rules, 1957 read with the SEBI circular dated May 7, 1997. Even before the Enquiry Officer, the Broker had failed to give any explanation in respect of above instances.

3.11 Thus, it is reasonably established that the Broker had violated the provisions of the Act read with the provisions of the Broker Regulations and the SEBI Circulars, as specified. As an intermediary operating in the securities market, the Broker is duty bound to comply with the statutory provisions including various circulars issued by SEBI from time to time. He has a duty towards the securities market. The Broker has not disputed the findings of the Enquiry Officer. The various requirements under the Act and Regulations in respect of an intermediary are conceived in the interests of investor protection and further to ensure that the business and conduct of the intermediaries are undertaken on the basis of sound business principle. An intermediary is inter alia required to

maintain high standards of promptitude and fairness while conducting his business. Taking into account the circumstances of the present case, the non compliance of statutory requirements on the part of the Broker call for a penalty as ordered hereinunder.

- 4.1 In view of the foregoing, I, in exercise of the powers conferred vide regulation 13(4) of Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, hereby impose a minor penalty of censure on the stock broker viz. APS Capital Services Private Limited (Registration number INB 111015931), Member, Pune Stock Exchange Ltd.

G. ANANTHARAMAN

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA

Place: Mumbai

Date: January 16, 2008.