

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 PREMIER SHARES LTD, MEMBER, NATIONAL STOCK EXCHANGE OF INDIA LTD.

1.1 Premier Shares Ltd. (for short, the Broker), Member, National Stock Exchange of India Ltd. (for short, NSE) is registered with Securities and Exchange Board of India (for short, SEBI) as a stock broker having registration number INB 230885730. SEBI, vide order dated August 6, 2002 appointed an auditor viz. M/s GP Agrawal & Co. (for short, the Inspecting Authority) to conduct an inspection of the books of accounts, documents and other records of the Broker, in terms of the provisions of Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992 (for short, the Broker Regulations). The period covered under the inspection was April 01, 2000 to August 30, 2002. The Inspecting Authority, after conducting the inspection, inter alia observed the following alleged irregularities:

- i) Installation of trading terminals at unauthorized places
- ii) Non maintenance of document register of securities
- iii) Discrepancies in the contract notes
- iv) Failure to enter into Member client agreement
- v) Dealing with un registered sub broker
- vi) Delay in delivery of shares to clients
- vii) Non rectification of bad delivery of shares

2.1 A copy of the aforesaid inspection report was forwarded to the Broker by SEBI, vide letter dated January 2, 2003 for its comments and the Broker

vide letter dated February 20, 2003 submitted its reply to the said inspection report. Thereafter, an Enquiry Officer was appointed by SEBI vide order dated December 04, 2003 read with the subsequent order dated September 30, 2004 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 (as observed during the inspection) committed by the Broker. The Enquiry Officer, thereafter, vide report dated December 28, 2004 recommended to impose a minor penalty of suspension of certificate of registration of the Broker for a period of one month.

3.1 Pursuant to the submission of the Enquiry Report, a notice dated January 4, 2005 was issued to the Broker, 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. Though, the Broker, vide letters dated January 13, 2005 and February 23, 2005 requested SEBI to grant further time to file its reply to the aforesaid show cause notice, SEBI had not received any reply from the Broker till date. SEBI granted an opportunity of hearing to the Broker on November 28, 2006. Shri Deepak Marodia, director of the Broker appeared before me and accepted the discrepancies/deficiencies observed during the course of inspection. He further requested to take a lenient view in the matter. He also submitted that SEBI had taken a lenient view against various stock brokers who were involved in similar violations.

3.2 I have perused the Enquiry Report, the show cause notice issued to the Broker, the submissions made on behalf of the Broker at the time of hearing and other materials available of record. I note that the Enquiry Officer in his report dated December 28, 2004 had observed certain

violations such as, non submission of books of accounts to the inspecting authority, irregularities in issuing contract notes, failure to use unique client code etc. In respect of contract notes, the Enquiry Officer noticed various deficiencies. Some of the deficiencies were delay in issuance of contract note, non maintenance of duplicate of contract notes etc. SEBI vide circular dated August 05, 1996 inter alia advised that serious view would be taken in case a stock broker was found to be responsible for certain deficiencies as stated therein. Some of such deficiencies specified in terms of 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 having SEBI registration numbers.
- e) Signed by unauthorised persons or not signed.
- f) Not maintaining copies of contract notes.
- g) Maintaining counterfoil of contract notes without adequate details.
- h) Despatching contract notes after 24 hours.

3.3 In the present matter, the Inspecting Authority had found various deficiencies of the Broker as pointed out above. Further, the said discrepancies were observed in 677 contract notes issued by the Broker. The specific instances of such deficiencies were communicated to the Broker through the show cause notice issued when the proceedings was pending before the Enquiry Officer. The Broker failed to submit any explanation in respect of the said observations of the Enquiry Officer. On the other hand, he accepted the said deficiencies. An intermediary operating in the securities market is inter alia required to maintain high

standards of promptitude and fairness while conducting his business. Therefore, in the facts and circumstances, it is fairly established that the Broker had violated regulation 17(1) (i) of the Broker Regulations read with SEBI circular dated August 5, 1996.

3.4 Further, Enquiry Officer had also observed that the Broker had not entered into member client agreement with 39 active clients and 1622 inactive clients. Besides, the Broker had entered into agreement with 41 clients after executing transactions on their behalf. There were deficiencies in the client registration forms also. 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. 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. as required under the aforesaid circulars. 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 The allegation that the Broker had not maintained separate bank accounts for client's funds at Patna branch (the money received from/ paid to clients were found to be deposited in / paid from its own account)

was admitted by the Broker before the Enquiry Officer. In terms of SEBI circular dated November 18, 1993, every stock broker shall distinguish in connection with his business as a stock broker -

- i. Moneys received from or on account of each of his clients and,
- ii. the moneys received and the moneys paid on Member's own account.

The aforesaid act of the Broker was in violation of SEBI circular dated November 18, 1993. Though specific instances (21 in nos.) of payment made to client account from the account of the Broker and 382 instances wherein the client account was used for the administrative expenses of the member were communicated to the Broker, no satisfactory explanation was provided by the Broker. Further, the allegation of financial accommodation to clients was admitted by the Broker before the Enquiry Officer. The said financial accommodation was in violation of Rule 8 (1) (f) and 8 (3) (f) of Securities Contract (Regulation) Rules 1957.

- 3.6 Further, it was observed that the Broker had not collected margin from the clients as required under SEBI circulars dated February 4, 2000, July 27, 2000 and May 17, 2002. Despite providing specific instances of non collection of margin money (25 cases) and short collection of margin money (9 cases), there was no satisfactory explanation from the Broker in this regard. In respect of the allegation of dealing with unregistered sub broker, the Broker contended before the Enquiry officer that it had dealt with the persons as clients and that it had obtained client registration form and client agreement form. Though, the list of 37 entities wherein the securities were transferred to a depository participant account (which did not match with the clients account) was provided to the Broker, it had failed to give any explanation in this regard. This would establish that the Broker had dealt with unregistered sub broker, in violation of SEBI circulars dated March 31, 1997 and January 15, 2001.

3.7 I also note that the Broker had not used unique client codes for trades done on behalf of various clients as required under SEBI circular dated July 18, 2001, by which it was made mandatory for all the stock brokers to use unique client codes for all the clients. Though, the specific instances of such violation were communicated to the Broker, it failed to give any satisfactory explanation in this regard. It was noted that there were 15 instances where, though sauda was recorded on self account as per sauda register, the trades were entered under various client codes. Besides there were 70 instances where though sauda was recorded on various client account as per sauda register, the trades were executed under self client code. Therefore, it is established that the Broker had violated the SEBI circular dated July 18, 2001. The member had also accepted before the Enquiry Officer that it had failed to maintain investors complaints register as contemplated under the then existing Rule 4(e) Securities and Exchange Board of India (Stock Brokers and Sub Brokers) Rules, 1992. Though the said Rules were rescinded with effect from September 07, 2006, the provision of the said Rules were simultaneously incorporated in the Broker Regulation. The Broker had also failed to produce statutory records to the inspecting authority. The explanation of the Broker was that the statutory records were with its company secretary for periodical inspection. The said explanation cannot be accepted as the notice for inspection was served in advance on the Broker and Regulation 21 of the Broker Regulation cast an obligation on the Broker to produce the books of accounts and other documents before the inspecting authority.

3.8 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. Premier Shares Ltd. (Registration number INB 230885730), Member, National Stock Exchange of India Ltd.

G. ANANTHARAMAN

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA

Place: Mumbai

Date: January 17, 2008