

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: DR. K. M. ABRAHAM, WHOLE TIME MEMBER

ORDER

UNDER REGULATION 28(2) OF SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008 IN THE MATTER OF M/S. NEELAM BHATIA & CO., MEMBER, LUDHIANA STOCK EXCHANGE LIMITED.

1. Securities and Exchange Board of India (hereinafter referred to as SEBI), vide order dated May 31, 2002 appointed M/s Sumat Gupta & Co. to conduct an inspection of the books of accounts, records and other documents of the stock broker namely, M/s. Neelam Bhatia & Co. (hereinafter referred to as the noticee), Member, Ludhiana Stock Exchange Limited (hereinafter referred to as LSE). The inspection, thus, carried out, for the period April 01, 2000 to March 31, 2002, observed certain deficiencies/irregularities committed by the noticee. The report of the said inspection was forwarded to the noticee by SEBI, vide letter dated May 08, 2003, for its comments. Pursuant to the receipt of the comments from the noticee, SEBI, vide order dated December 5, 2003 read with subsequent orders dated December 20, 2005, July 19, 2007 and December 10, 2008 appointed an Enquiry Officer under the provisions of Securities and Exchange Board of India (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/deficiencies observed during the inspection. As the Enquiry Regulations were repealed with effect from the notification of Securities and

Exchange Board of India (Intermediaries) Regulations, 2008, the Enquiry Officer/Designated Authority (hereinafter referred to as the Enquiry officer) submitted his Report dated April 09, 2009 in terms of Regulation 27 of Securities and Exchange Board of India (Intermediaries) Regulations, 2008 and recommended issuance of 'warning' to the noticee. The Enquiry Officer observed that the noticee violated the following provisions of law/circulars.

- (a) Regulation 17(1) (a) & (k) of the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992.
- (b) The provisions of Circular no. SMD/POLICY/IECG/1-97 dated February 11, 1997.
- (c) The provisions of Circular no. SMD (B)/104/22775/93 dated October 29, 1993.
- (d) The provisions of Circular no. SMD/POLICY/CIRCULAR/5-97 dated April 11, 1997.
- (e) The provisions of Circular no. SMDDRP/POLICY/CIR-39/2001 dated July 18, 2001.
- (f) The provisions of Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993.
- (g) Regulation 12(1) (a) of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992.

2. Subsequently, a notice dated April 27, 2009 was issued by SEBI to the noticee asking it to show cause as to why the appropriate action including the penalty as recommended by the Enquiry Officer should not be imposed against it. The noticee was advised to reply to the show cause notice, together with documents that it may choose to rely upon in support of his reply within twenty one days of the receipt thereof. It was also informed that in case of failure, it would be presumed that it had no explanation to offer and SEBI shall be free to take such action in the manner as it deemed fit. A copy of the Enquiry Report was also forwarded to the noticee along with the said show cause notice. The

said show cause notice was served on the noticee on April 28, 2009 through LSE, which was acknowledged by its Manager. As no reply was received from the noticee, another opportunity was provided to it by SEBI, vide letter dated May 20, 2009, which was also duly received by him on May 21, 2009. I note that sufficient opportunities were provided to the noticee to make its submission. Though, the show cause notice and the subsequent notice was served on the noticee, it had failed to submit any reply. Given the facts and circumstances of the case, I do not consider it necessary to grant another opportunity to the noticee and the present proceedings are therefore, being considered on the basis of the available material on record.

3. I have perused the Enquiry Report, the show cause notice issued to the notice and other material available on record. I note that the Enquiry Officer found the notice guilty of violating Regulation 17(1) (a) & (k) of Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as the Broker Regulations), as it had not maintained the register of transactions and the Margin Deposit Book. The inspection conducted by SEBI found that the noticee had maintained only the stock register and not the register of transactions (Sauda Book) and the margin deposit book. The noticee had not made any submissions in respect of the same in the proceedings before the Enquiry Report. The aforesaid provisions, under which the Enquiry officer has found the noticee guilty, are reproduced below:

"17(1) "Every Stock Broker shall keep and maintain the following books of accounts, records and documents, namely:

(a) Register of transactions (Sauda Book);

.....

(k) Margin deposit book..."

In view of the same, I agree with the findings of the Enquiry Officer that the noticee had contravened the provisions of Regulation 17(1) (a) & (k) of the Broker Regulations.

4. During the inspection conducted by SEBI, it was also observed that the noticee had not maintained the order book, regarding which no submissions had been made by him during the proceedings before the Enquiry Officer. I observe that by not maintaining the order book, the noticee had contravened the provisions of SEBI Circular no. SMD/POLICY/IECG/1-97 dated February 11, 1997, which requires the stock broker 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.

5. The Enquiry Officer had observed that the noticee admitted that it had issued only confirmation slips and not the contract notes to its clients. The Enquiry Officer further observed that although the noticee stated that it had entered into an agreement with clients and were duly shown to the inspecting team, no documentary proof for the same had been provided. In terms of the SEBI Circular dated April 11, 1997, it is the duty of the stock broker to enter into an agreement with its clients and provide the details of the clients as and when the need arose. It was also advised that the stock brokers might seek additional information, if any, so as to satisfy himself about the antecedents of the clients. In the present case, the noticee failed to prove that it had entered into the aforesaid agreements. In view of the above, I agree with the Enquiry Officer's observation that by not issuing the contract notes to the clients, the noticee violated the provisions of SEBI Circular no. SMD (B)/104/22775/93 dated October 29, 1993 and by not complying with the 'Know Your Client' requirements, the noticee violated the provisions of SEBI Circular no. SMD/POLICY/CIRCULAR/5-97 dated April 11, 1997.

6. In respect of non-issuance of unique client codes to its clients, the Enquiry Officer found the noticee of having violated the provisions of SEBI Circular no. SMDRP/Policy/CIR-39/2001 dated July 18, 2001. The said circular makes it mandatory for stock brokers to use unique client codes for all its clients. The Enquiry Officer further observed that the noticee did not maintain a clear distinction between the clients' funds and his funds, by maintaining separate accounts and hence violated the provisions of SEBI Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993, which inter alia makes it compulsory for all stock brokers to keep the money of the clients and their own money in a separate account. The Enquiry officer also observed that the noticee had not framed the 'code of conduct' which was in violation of the provision of Regulation 12(1)(a) of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, as the said provision requires the intermediaries to frame 'code of conduct' and 'internal procedures' as near thereto the Model Code specified in Schedule I of the said Regulations. Though, the copy of the Enquiry Report was provided to the noticee, no steps were taken by it to controvert the findings of the Enquiry Officer. Considering the totality of the case, I am in agreement with the findings of the Enquiry Officer.

7. As an intermediary functioning in the securities market, the noticee shall abide by the Regulations/Circulars framed by SEBI that govern its conduct in the securities market. The said provisions are put in place for the smooth functioning of the securities market and for the protection of the interest of the investors. In the present case, as has been detailed above as well as in the Enquiry Report, the noticee had violated various provisions of the Regulations/Circulars framed by SEBI. Further, no effort was taken by it to refute the findings of the Enquiry Officer. Given the facts and circumstances of

the case, I also agree with recommendation of the Enquiry Officer and the present enquiry proceedings are disposed of as ordered herein under.

8. In view of the foregoing, in exercise of the powers conferred on me under Section 19 of Securities and Exchange Board of India Act, 1992 read with Regulation 28(2) of Securities and Exchange Board of India (Intermediaries) Regulations, 2008, the stock broker namely, M/s. Neelam Bhatia & Co. (Registration No.INB120314510), Member, Ludhiana Stock Exchange Limited, is hereby warned for the deviations observed herein from the provisions of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992 and the circulars which regulate its function as a registered intermediary of Securities and Exchange Board of India. The aforesaid stock broker is directed to strictly abide by laws, rules and regulations which govern dealings in the securities market.

DR. K. M. ABRAHAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Place: New Delhi (Camp Office)

Date: June 24, 2009