

WTM/KMA/MIRSD/164/11/2009

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

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

ORDER

UNDER REGULATION 28(2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008 AGAINST M/S. KEDAR NATH AGARWAL

Date of hearing: August 5, 2009

Appearance:

For M/s. Kedar Nath Agarwal: Mr. Kedar Nath Agarwal, Proprietor
Mr. Pravin Panwar, Adviser

For the Securities and Exchange Board of India: Mr. Piyoosh Gupta, General Manager
Mr. Vijayakrishnan G., Deputy Legal Adviser
Mr. Vir Sahab Singh, Assistant General Manager
Mr. T. Vinay Rajneesh, Legal Officer

1. The Securities and Exchange Board of India (hereinafter referred to as SEBI) appointed M/s. Patni & Co. (Chartered Accountants) to conduct inspection of the books of accounts, documents and other records maintained by the stock broker namely, M/s. Kedar Nath Agarwal [Member, National Stock Exchange of India Limited (NSE)] for the period April 1, 2001 to April 30, 2003. SEBI also carried out a separate inspection of the aforesaid stock broker for the same period. M/s. Kedar Nath Agarwal is hereinafter referred to as the stock broker. The above mentioned inspections observed certain irregularities /deficiencies on the part of the stock broker. The findings of the inspections were communicated to the stock broker for its comments. As the submissions made by the stock broker were found to be unsatisfactory, SEBI, vide order dated March 2, 2005 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Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations 2002 (since repealed). The

Enquiry Officer, vide report dated November 13, 2006 recommended the suspension of the certificate of registration of the stock broker for a period of twenty days. Thereafter, a notice dated November 27, 2006 was issued by SEBI to the stock broker requiring it to show cause as to why appropriate penalty as recommended by the Enquiry Officer should not be imposed on it. The reply of the stock broker dated January 22, 2007 is considered later in this order. Thereafter, the stock broker filed an application for consent in terms of SEBI Circular dated April 20, 2007. Accordingly, the present proceeding was kept in abeyance and pursuant to the rejection of the aforesaid application the same was resumed and an opportunity of hearing was granted to the stock broker on August 5, 2009 wherein Mr. Kedar Nath Agarwal, proprietor of the stock broker appeared before me and made submissions. Mr Pravin Panwar, adviser to the stock broker was also present during the hearing.

2. I have considered the Enquiry Report, the oral as well as written submissions made on behalf of the stock broker and other available material on record. My findings in respect of the allegations against the stock broker are as under:

3. In respect of improper maintenance/issuance of contract notes, the inspection conducted on the stock broker observed certain irregularities. Some of the irregularities are given below in brief:

- a. In one instance, the contract note was not acknowledged.
- b. There was a delay in issuance of the contract note.
- c. Some of the contract notes were acknowledged quite late as in the case of Samita de Sarkar

SEBI, vide circular dated August 5, 1996 had advised all the stock exchanges to inform its members about certain common irregularities/deficiencies which

were observed during the course of inspection of the stock brokers, for their rectification. One of the deficiencies specified in the said circular was the delay in dispatching the contract notes after twenty four hours. SEBI had further advised in the said circular that, the deficiencies would be viewed seriously, if it were observed during the future inspections of the stock brokers by SEBI. In view of the small number of such instances, the Enquiry Officer observed that the same were not significant to be viewed seriously. The inspection had also found that the name of the authorized signatory was not indicated to NSE by the stock broker for more than six years. As regards the said charge, the Enquiry Officer found that no proof was furnished by the stock broker in support of its contention that NSE was aware of the authorized signatories. The stock broker, in its reply dated January 22, 2007 submitted that, it had forwarded a copy of the list of documents submitted to NSE, at the time of their inspection in July 2001 and that item 20 in the said list clearly mentioned the list of authorized signatories along with specimen signature. The stock broker further submitted that it did not retain a copy of the said letter. In this regard, I note the observation of the Enquiry Officer *"Further, even as regards the NSE report, I have perused the same but do not find anything therein to indicate that NSE was aware of the name of the authorized signatory. I have a letter dated November 6, 2003 addressed by NSE to KNA approving a list of various authorized persons on receipt of intimation dated June 2003 from KNA. But whether the same was meant for the authorized signatories is not clear. Furthermore, as the said letter pertains to a period of time after the period of inspection. I am not inclined to take note of the same."* If the stock broker was really keen to substantiate its claim, it could have requested NSE to furnish a copy of its letter along with the enclosures. However, it failed to do so. In the absence of any material to establish that the stock broker had furnished the name of its authorized signatory to NSE, I do not find any reason to disagree with the Enquiry Officer in this regard.

4. The Enquiry Officer also found that there were instances of delay in making the payments/delivery of securities to the clients and that the same were in violation of SEBI Circular No. SMD/SED/93/23321 dated November 18, 1993 and Circular No. SMDRP/Policy/Cir-05/2001 dated February 1, 2001. In this regard, the stock broker submitted as follows;

- a. It had retained funds of the clients in the Clients' Account as per the instructions of clients and after obtaining their consent.
- b. That it was relevant whether the consent obtained is a general consent or specific to a particular payment.
- c. That client desired that funds were retained for a variety of purposes, including margin payments and advance amounts towards transactions.
- d. That it was cumbersome and inconvenient for clients to issue directions in respect of each and every payment,
- e. That a client who does not wish us to retain amounts is not obliged to issue any authorization letter to it
- f. That none of its clients had complained to NSE or to SEBI that there was a delay in making payments.
- g. That in the instances where clients give such authorization letters, there may be a credit balance, but payments may have been made by us only upon settlement of accounts at the request of clients.
- h. That retaining funds of clients on their instructions/authorization, cannot lead to a presumption that it had misused such funds, which is erroneous, mischievous and not sustainable.

5. In respect of the delay in the payment of funds to its clients, the contention of the stock broker is that it had retained funds of clients other than its family members as per their instructions and that, in the case of family members; they had been treated as part of its enterprise and accounted for the funds. The contention of the stock broker is that it had obtained consent letters from their clients at the time of entering into the agreement which authorized it

to keep credit balances in its account and also to keep shares of the clients towards the margin or future obligation. However, the Enquiry Officer observed that a mere furnishing of a common consent letter from the clients, obtained at the time of entering into the agreements (with the clients) would not suffice as the consent letters were obtained by the stock brokers as a matter of abundant caution. The Enquiry Officer also found that the stock broker had failed to explain the instances where the clients had already a credit balance but there was a delay on the part of the stock broker to fulfill the conditions of belated pay out to the clients. The stock broker had been found to have delayed the pay out of funds, the delay ranging from 25 to 391 days in 71 instances. In terms of SEBI circular dated November 18, 1993, a stock broker shall make the payment to his clients or deliver the securities purchased within two working days of pay out unless the client has requested otherwise. SEBI vide another circular dated February 1, 2001 had prescribed that the clearing member shall be required to transfer the securities from their respective CM Pool account to the respective beneficiary account of their clients within six calendar days after the pay out day. Further, the stock broker also did not collect margins for the year 2001 and 2002 and the adequate upfront margins for 2002-03. The act of the stock broker in retaining the amounts to be paid to its clients on account of sale transactions and retaining the securities purchased by the client for margin purposes, in the absence of express, specific permission from the clients, is misconduct on its part. In this regard, the Enquiry Officer had observed, "*KNA had also stated that they had collected the margins in the form of cash. In that case, the retention of securities etc also cannot be justified. Hence, the contention of KNA of having retained the shares/funds for margin purposes also falls. In view of the above, the contention of KNA as regards obtaining the blanket acceptance from its clients is untenable.*" In the facts and circumstances, I do not have any hesitation in holding that the stock broker violated SEBI Circulars dated November 18, 1993 and February 1, 2001.

6. In respect of the allegation of non-segregation and misutilization of the clients' bank accounts and clients' funds, the Enquiry Officer found that the stock broker violated the SEBI Circular dated November 18, 1993. I note that the inspection report, as observed by the Enquiry Officer, had given specific instances wherein the stock broker were found to have used the clients accounts for purposes other than receipt from or payments to clients. It was also alleged that the amounts received from the clients were deposited into the self accounts or payments to clients were made from the stock broker's self account. It was alleged that the stock broker was found to have misutilized the clients' money to the tune of Rs.85,09,000/- during the period from February 1, 2002 to February 28, 2002. The Enquiry Officer had found that an amount of Rs.3,89,734.95/- was withdrawn by Kedarnath Agrawal Prop Investment, which was a self account. According to the Enquiry Officer, the said withdrawal was one of the instances where the stock broker had failed to maintain clear cut segregation between the client account and its proprietary account. It was also observed that prior to February 2002, the clients' accounts were misutilized and were used for the purchase of Air Conditioner, computer etc. from the funds in the client's account. In respect of the said charge of non-segregating the clients' funds from self and misutilization of funds, the stock broker submitted as follows:

- a. The funds credited into the clients' account included brokerage due and payable to it and that clients included the same while issuing cheques in its favour. The clients did not segregate between payments made to it towards pay-in and brokerage;
- b. That the banks with whom it maintained both client accounts and own accounts often made credits and debits on their own and without instruction from its end;
- c. That a few of its clients (as mentioned in the Annexure XIII to the Inspection Report) were close relatives of the proprietor. The funds in

respect of them have been treated as family funds to be invested by the it;

- d. The deposits by Mr. Bajrang Choudhary were not deposits but erroneous payments that were reversed on the very same day;
- e. That the sum of Rs.3,89,734.95/- was withdrawn on March 23, 2002 for payment to Kegarnath Agrawal Prop Investment Account was part of the brokerage amount of Rs.62,89,470.23 earned and received by it in the client account maintained with the IndusInd Bank. That, it only withdrew the brokerage which legitimately belonged to it and not clients' funds as alleged; the withdrawal on December 13, 2002, for a sum of Rs.1,508,500.00 for payment to Kedarnath Agrawal Prop. Investment Account was again a part of the brokerage earned and received by it in the client account with Indusind Bank;
- f. That, the amounts deposited on February 10, 2003 and March 07-11, 2003, was on account of an error on the part of the concerned clerk;
- g. In respect of Mr. Bajranglal Agrawal and Pravin Agarwal, the transfer cheques were issued as they needed immediate funds in their basic account;
- h. That the Enquiry Officer rejected its calculation in respect of the total amount of clients funds misutilized;
- i. That, it had credited and debited such monies as are permitted under the SEBI circular dated November 18, 1993, to and from the clients account;

7. The stock broker had denied the allegation that it did not segregate funds of its clients and self. It contended that the money withdrawn was the brokerage which it was entitled to, in terms of the SEBI Circular dated November 18, 1993. It was also contended that deposits were made erroneously. Though, the stock broker had contended that it had maintained clear cut segregation of funds after the February 2002, the same was not found to be true by the Enquiry Officer, who had also pointed out certain instances of the same. The Enquiry Officer had observed, *"There were also other instances of deposits/advances of*

Rs.25,00,000/- on February 10, 2003 in the Indus Ind Bank client account and the total amount of Rs.65,00,000/- from March 7-11, 2003 were shown as deposits/advances in HDFC client bank account.” In this regard, the stock broker vide reply dated January 22, 2007 *interalia* stated, “*In respect of the amounts of deposited on February 10, 2003 and March 07-11, 2003, we have already submitted that the same was on account of an error on the part of the concerned clerk, which we subsequently rectified.*” This statement on the part of the stock broker would establish that there were instances of non segregation of funds as stipulated under SEBI Circular No.SMD/SED/CIR/93/23321 dated November 18, 1993. The said circular was in force since 1993 and therefore, the stock broker cannot make trivial pleas such as errors or mistakes and avoid compliance with the provisions of the said circular. The Enquiry Officer further observed that, even after NSE inspection, the stock broker did not maintain clear cut segregation. The Enquiry Officer also observed that the stock broker, while submitting its reasons vide Exhibit No.18/1, had ignored the first entry dated March 23, 2002 which pertained to the withdrawal of Rs.3,89,734.95 by Kedarnath Agrawal Prop Investment, which was nothing but a self account. The reply of the stock broker that the brokerage earned and received by it in the client account with Indus Ind Bank was much higher than the said amount cannot be a justification for such withdrawal. The circular dated November 18, 1993 strictly prohibits the same. Similarly, there was a deposit of amount of Rs.15,08,500 on December 13, 2002 in the client bank account maintained with Indus Ind Bank from the account of Kedarnath Agrawal Prop Investment. The reply of the stock broker that its funds to the extent of Rs.56,97,001 was lying in the accounts of the clients would indicate that there was no proper segregation of funds. Thus, it is established that the stock broker had violated the Circular dated November 18, 1993. The Enquiry Officer observed as regards the receipt of amount from the clients in the self account or the payment to the clients from the self account, that the stock broker had provided its reasons only in 4 out of the 8 instances.

8. From the instances enumerated in the Enquiry Report and in the absence of cogent explanations from the stock broker, I am convinced that the stock broker had clearly not segregated funds of its clients and own funds and was operating both as per its needs. The submission of the stock broker that it was the bank that had debited and credited their account without their depositing/issuing any cheque to the client account, has also been found not to be correct as the letters addressed by the stock broker to the bank was for other purposes, as brought out in the Enquiry Report. If its contention was bonafide, it would have given appropriate instructions to the bank in that regard. The stock broker could not produce any proof in respect of its submissions. Thus, I am satisfied that the stock broker had contravened the provisions of SEBI Circular dated November 18, 1993, as the stock broker had not segregated clients accounts and its account and also that it had made credits and debits for the purposes other than those identified in the said circular.

9. The Enquiry Officer had found that the stock broker had failed to collect margin from their clients for the period 2001-2002 and that it did not collect adequate upfront margins from its clients for the period 2002-03. The said conduct had violated the provisions of SEBI Circulars dated November 18, 1993, February 1, 2001 and May 17, 2002. In this regard, the stock broker had submitted that:

- a. it had collected margins from clients depending upon the risk that they were taking while placing orders with it;
- b. the margins were taken in cash, it meant that the margins were in the form of funds and not securities; the Enquiry Officer had misunderstood the same to mean that it had collected margins in the forms other than cheques/demand drafts;

- c. while calculating the margins to be collected, it had considered the securities available with it and the credit balances (if available) in the clients' account;

10. The Enquiry Officer had found that the stock broker was not in the habit of collecting margins from their clients for the entire year 2001-2002. Further, 16 instances of non-collection of margins were found during 2002-2003. The Enquiry Officer had observed that margin money in cash could not be accepted and that even if the same was accepted, the stock broker should have deposited the same in the clients' account/s. I note that in terms of the SEBI Circular dated November 18, 1993, stock broker should not accept cash for purchases of securities and/or give cash against sale of securities. It was also stipulated that all payments received/made should be strictly by, "*Crossed Payees A/c Cheques*". According to the stock broker, when it stated that it had collected margins in cash, it meant that the same were in the form of funds and not securities. I find that, even if one were to accept such a plea, the stock broker had failed to show with the help of supporting documents like bank account entries that it had accepted funds. The stock broker did not take any effort in this regard. Mere submissions not backed by any supporting material would not benefit the stock broker. Also, the stock broker was not able to furnish proof for having collected margins in respect of the 16 instances so identified, where the gross exposure to the clients was more than Rs.5 lakhs, either before the Enquiry Officer or before me. In terms of SEBI Circular dated November 18, 1993, a stock broker can buy securities on behalf of the client only on receipt of margin of minimum 20% on the price of the securities purported to be purchased. Further, SEBI Circular dated May 17, 2002 specifies that if the client's position exceeds Rs.5 lakhs, the stock broker would necessarily require to collect 10% margin from the clients. As stated earlier, in some of the cases the gross exposure to the clients was more than Rs.5,00,000/-. One of the objectives of the safeguards in the market

mechanism is to ensure that no market default happens. This is ensured by the stock brokers by collecting adequate margins in accordance with the exposure taken by a client in the securities market. As the stock broker is not able to controvert the finding of the Enquiry Officer in respect of this charge, the same stands established. I, therefore find the stock broker guilty of having contravened the above mentioned SEBI Circulars.

11. The Enquiry Officer also found the stock broker guilty for having indulged in transactions which were not carried out on the floor of the exchange, in violation of Section 19 of the Securities Contracts (Regulation) Act, 1956, SEBI Circulars dated March 14, 1995 and September 14, 1999. In respect of this charge, the stock broker contended that:

- a. the Enquiry Officer had incorrectly observed that off-the-floor transactions are not permitted from September 14, 1999 and that it was incorrectly observed that the impugned trades were not trades done on a spot basis since they were not reported to the exchange;
- b. The said transactions were spot delivery contracts since they were settled by payment and delivery within 48 hours;
- c. The shares were purchased in NSE and after its purchase, trading in the said scrips were suspended on the NSE. Therefore, it had to sell the shares outside the NSE on spot basis.
- d. the finding of the Enquiry Officer that off-the-floor transactions were not permitted from September 14, 1999 is erroneous and baseless and cannot be sustained;

12. I find that the stock broker had dealt in various scrips as given below:

Date	Party name	Purchase/Sale	Scrip	Qty.	Amount
08.04.02	PPC	Sale	DSQ Biotech	635	8,985.25
09.04.02	PPC	Sale	DSQ Biotech	1365	18,905.25
01.07.02	PPC	Sale	Birla Yamaha	4000	101,462.95
20.07.02	PPC	Sale	KMK Lamipack	6000	24,000.00
28.07.02	PPC	Sale	Timex Watches	5927	75,381.95

PPC -Prem Prakash & Co.

The stock broker had submitted that since the trading at NSE in such scrips was suspended, it had sold the said shares off market. In proof thereof, it had annexed depository statements showing delivery of shares to the beneficiaries. SEBI Circular dated March 14, 1995 has mandated stock brokers to report all transactions on a spot basis on the same day and also to report on the same day, all transactions adjusted in their books – whether between two clients or whether a client and the broker as a principal. Though, the stock broker contends that the said trades were “spot deals”, I find no material in support of the fact that the said trades were reported to the stock exchanges within the time specified in terms of the SEBI Circular dated March 14, 1995. Further, in respect of the payments, the stock broker had indicated that the running account of Prem Prakash & Co. was debited. No account statements showing such debits were produced. In the present case, the stock broker has taken a position as a ‘principal’ by selling own shares. As the stock broker has taken a stand that its trades were spot deals, it is guilty for not reporting the same to the stock exchange as required under SEBI Circular dated March 14, 1995.

13. The Enquiry Officer found that the stock broker indulged in trade transfers, thereby contravening the provisions of SEBI Circulars dated November 18, 1993 and July 18, 2001. It was found that, in case of client to client transfers, most of those trades were found to be intra family transfers. It was found in respect of clients; Purshotam Lal Agrawal (HUF), Sulochana Agrawal, S.S. Kakrania and Sushma Khandelwal, the orders for purchase and sale were entered in ‘self account’ and were later transferred to the said accounts. In respect of the said allegation, the stock broker submitted the following:

- a. that it carried out the trade transfers only to rectify errors in entry of client codes and where a family member wanted to show the trades in his/her name;

- b. that the clients were aware of the transfers from the account statements sent to them from time to time;
- c. that none of the clients had ever complained about the trade transfers allegedly done without their knowledge;
- d. that errors are part of any process and cannot be the ground to arrive at a finding that it had committed fraud;
- e. that it had inadvertently and as part of a genuine clerical error, not completely adhered to the norms of unique client code;

14. I note that there had been 114 instances of trade transfers, without the knowledge of the clients, as brought in the inspection report. Further, all such transactions entered into the self account were from Settlement Nos.2002006 to 2002009 and were squared off. Number of instances were noticed where the transactions were entered into the 'self account' and later on transferred to the client's account. Besides, the usage of unique client code is also emphasized by SEBI vide circular dated July 18, 2001. The submission of the stock broker, *"We submit that we may have inadvertently and as part of a genuine clerical error, not completely adhered to the norms of unique client code; however we request that the same may not be considered as a violation of the Code of Conduct or the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 1995"* would establish that the stock broker had not complied with the provisions of the said circular. The circular dated November 18, 1993 prohibits the adjustment between one client account to another unless on an express authority obtained from the clients. The instances observed are too many for me to take a view that errors are accidental in nature. Further, the stock broker cannot plead that client codes were erroneously entered. Such a casual discharge of duties on the part of the stock broker cannot be excused. Therefore, it is established that the stock broker has contravened the provisions of SEBI Circular Ref. SMD-1/23341 dated November 18, 1993 and SEBI Circular dated July 18, 2001.

15. Another charge leveled against the stock broker was that it had operated its trading terminals in certain unauthorized locations and operated by unauthorized persons. It was found that the stock broker had 21 terminals for the capital market segment of which 9 were with NEAT user's ID of which only 6 were found to be installed in the registered office of the stock broker. Details of location of trading terminals of the stock broker were mentioned by the Enquiry Officer. It was also found that Mr. Prem Prakash Agarwal, the proprietor of M/s. Prem Prakash & Co.,(member, Calcutta Stock Exchange Association Limited) was found to be operating from the same premises as the stock broker. The stock broker was also found to have dealt with an unregistered sub-broker, Manas Kumar Roy. The Enquiry Officer observed that the stock broker did not provide any material to substantiate that the terminals installed at other offices were used by authorized persons at authorized locations. In this regard, the stock broker had submitted that, out of the 21 trading terminals used by it during the relevant period, 9 were NEAT terminals directly linking it with the NEAT trading system of NSE and the remaining were Computer To Computer Links (CTCL) linked to one computer which was in turn directly linked to the NEAT trading system. According to the stock broker, out of said terminals, 5 NEAT terminals and 1 CTCL terminal were installed at its head office at 405, Todi Chambers, 2, Lal Bazar Street, Kolkata – 700 001. The stock broker also provided the details of the terminals installed at other places, as per the table below:

Sr. No.	Location	Nature of terminal	Remarks	Rent Payments
1	34 Ezra Street, Kolkata-700001	NEAT	Rented	Rs.50/-
2	P 3/1 & 4 Bangur Avenue Block-C, Kolkata-700055	NEAT	Rented	Rs.3500/-
3	P 3/1 & 4 Bangur Avenue Block-C, Kolkata-700055	NEAT	Rented	Rs.3500/-
4	P 3/1 & 4 Bangur Avenue Block-C, Kolkata-700055	NEAT	Rented	Rs.3500/-
5	6 Lyons Range, Fortune Chambers A-5, Kokata-700	CTCL	Rented	Rs.50/-

	001			
6	4 NS Road, 1 st Floor, Kolkata – 700 001	CTCL	Rented	Rs.50/-
7	4 Fairly Place, 6 th Floor(Room No.606), Kolkata – 700 001	CTCL	Rented	Rs.50/-
8	101, Todi Chambers, 2, Lal Bazar Street, Kolkata – 700001	CTCL	Rented	Rs.50/-
9	14/2 Old China Bazar Street, 4 th Floor (Room No.430), Kolkata – 700 001	CTCL	Rented	Rs.50/-
10	Naity Road PO – Barabahera, Hooghly	CTCL	Rented	Rs.50/-
11	G17, Ground Floor, Roy MC Lahiri Bahadur Street, PO-Serampur, Dist Hooghly	CTCL	Rented	Rs.750/-
12	89/P3A Vivekanand Road, 1 st Floor, PO Bangur park Rishra, Hooghly	CTCL	Rented	Rs.700/-
13	169 GT Road Sheoraphuli, Hooghly -712223	CTCL	Rented	Rs.50/-
14	NC Paul Market, 1 st Floor (Room No.-6) Andul, Gopal Bag Howrah 711302	CTCL	Rented	Rs.50/-
15	194 Bijoy Laxmi Colony Nabapally Barasat, 24 parganas (N) 700124	CTCL	Rented	Rs.50/-

According to the stock broker, the aforesaid locations had been declared to NSE as its branches. It further stated that, though, the terminals were installed at the places owned by the clients, the same were operated by its employees.

16. In respect of the charge that certain persons/entities were acting as unregistered sub-brokers to the stock broker, the stock broker submitted that Mr. Manas Kumar Roy was a branch manager at Hooghly and that the premises was taken by him on rent. The stock broker further submitted that merely because it had installed trading terminals in premises belonging to Pradeep kumar Agrawal & Co., Investech Securities & Co., Rajendra Kumar Wadher, Prem Prakash & Co., and Sunil Kumar Jhunjhunwala, it cannot be presumed that it had dealt with them as sub brokers.

17. I find that Mr. Kedarnath Agrawal, Mr. Bijay Kumar Agrawal and Ms. Anamika Khandelwal were authorized to use the trading terminals. It was found that except Ms. Anamika Khandelwal, all the other terminals were used by unauthorized persons. The stock broker had given a list of persons authorized to operate its trading terminals. As per the stock broker, the following persons were authorized to operate its trading terminals at the relevant time:

Sr. No.	Location	Terminal ID	Authorized User	Remarks
1	405 Todi Chambers, 2, Lal Bazar Street, Kolkata – 700001	6331	Kedar Nath Agrawal	Proprietor
2.	405 Todi Chambers, 2, Lal Bazar Street, Kolkata – 700001	6332	Bijay Kumar Agrawal	Core Dealer
3	405 Todi Chambers, 2, Lal Bazar Street, Kolkata – 700001	14962	Vikram Kumar Purahot	Dealer
4	405 Todi Chambers, 2, Lal Bazar Street, Kolkata – 700001	14963	Anamika Khandelwal	Employee
5	405 Todi Chambers, 2, Lal Bazar Street, Kolkata – 700001	6333	Suresh Kumar Khandelwal	CTCL enabled ID
6	405 Todi Chambers, 2, Lal Bazar Street, Kolkata – 700001	Trader 1	Anamika Khandelwal	Employee
7	P 3/1 & 4 Bangur Avenue Block-C, Kolkata-700055	6334	Sunil Kumar Agarwal	Dealer
8	P 3/1 & 4 Bangur Avenue Block-C, Kolkata-700055	12509	Aditya Vikram Surekha	Branch In Charge & Dealer
9	P 3/1 & 4 Bangur Avenue Block-C, Kolkata-700055	12579	Prem Prakash Agarwal	Dealer
10	P 3/1 & 4 Bangur Avenue Block-C, Kolkata-700055	15067	Vikash Kothari	Dealer
11	6 Lyons Range, Fortune Chambers A-5, Kokata-700 001	Trader 5	Purnendu Debnath	Employee
12	4 NS Road, 1 st Floor, Kolkata – 700 001	Trader 4	Sukanta Seal	Dealer
13	4 Fairly Place, 6 th Floor(Room No.606), Kolkata – 700 001	Trader 2	Prakash Mehta	Dealer
14	101, Todi Chambers, 2, Lal Bazar Street, Kolkata – 700001	Agarwal	Anil Kumar Jhunjhunwala	Dealer
15	14/2 Old China Bazar Street, 4 th Floor (Room No.430), Kolkata – 700 001	Trader 3	Sunil Bajaj	Dealer
16	4 NS Road, 1 st Floor, Kolkata –	Manas Roy	Joydeep Roy	Dealer

	700 001			
17	4 Fairly Place, 6 th Floor(Room No.606), Kolkata – 700 001	Manas Roy1	Dinesh Roy	Dealer
18	89/P3A Vivekanand Road, 1 st Floor, PO Bangur park Rishra, Hooghly	Manas roy2	Subir Gupta	Dealer
19	169 GT Road Sheoraphuli, Hooghly -712223	Sunila	Sunil Kumar Agarwal	Dealer
20	NC Paul Market, 1 st Floor (Room No.-6) Andul, Gopal Bag Howrah 711302	Trader 7	Sudipta Roy	Dealer
21	194 Bijoy Laxmi Colony Nabapally Barasat, 24 Parganas (N) 700124	Trader 8	Sankar Prasad Ghosh	Dealer

The stock broker also submitted that most of the authorized persons were its employees (on rolls) and that a few were engaged on commission basis and had acted as traders on its instructions alone. The stock broker also submitted that, due to exigencies such as a terminal being non functional or an authorized person being absent, it may require an authorized person to operate a terminal that may not be normally operated by him or her and because of the same, it cannot be said to be in violation of any rule. Though, the stock broker contended that the terminals were operated by authorized persons, it failed to furnish any supporting documents to show that such persons (other than Mr. Kedar nath Agrawal, Mr. Bijay Kumar Agrawal and Ms. Anamika Khandelwal) were indeed the authorized personnel. Thus, it is seen that the terminals were operated by unauthorized persons as a matter of routine. In view of the same, I am unable to accept the stock broker's contention that only authorized persons were operating its terminals. In respect of the charge that the terminals were placed at unauthorized locations, the stock broker had submitted that such terminals were placed in locations/places which were rented and in support of the same had produced rental receipts (in respect of table space). The stock broker submitted that it was coincidental that the owners/lessors of the office spaces where its trading terminals were installed were its clients. According to the stock broker, those locations had been declared to NSE as its branches and that as per NSE's Regulations, the stock broker was permitted to install trading

terminals at its offices—main office/branch offices and offices of its sub brokers. The stock broker also submitted that though the terminals were installed at places owned by clients, it was its employees/authorized persons who had operated the terminals. Here again I am unable to agree with the contentions of the stock broker. SEBI, vide circular dated October 22, 2001, had made it clear that trading terminals could be granted only at the member's registered office, branch offices and their registered sub-broker's offices. The said circular was issued by SEBI on noticing that the trading terminals granted to the stock brokers at various locations were being mis-utilised for unregistered sub-broking activities. The Enquiry Officer had also provided certain details of usage of terminals by unauthorized persons. Though, the stock broker submitted that the terminals were installed at places owned by clients, it failed to substantiate that the same were authorized locations, in terms of SEBI Circular dated October 22, 2001. Merely submitting that the terminals were operated by its employees/authorized persons does not exonerate it. Such activities of a stock broker poses a serious threat to the integrity of the securities market.

18. In respect of the charge of dealing with unregistered sub-brokers, I note that the inspection had found that trading terminals were also provided to M/s. Pradeep Kumar Agrawal & Co., Investech Securities & Co., Rajendra Kr. Wadher, Prem Prakash & Co. and Sunil Kumar Jhunjhunwala. The Enquiry Officer had found that Prem Prakash & Co. had acted as an unregistered entity using the trade terminals of the stock broker. It is pertinent to note that the said entity had its office at the registered office of the stock broker. Certain clients had sought contract notes from the said entity, who could not have traded (as the TWS of said entity who was an erstwhile member of CSE, was deactivated) other than through the trading terminals extended by the stock broker. The Enquiry Officer had given detailed findings in this regard. However, the said findings were not specifically controverted by the stock broker. SEBI, vide circular dated March 31, 1997 had mandated that no stock broker shall deal

with a person who is acting as a sub-broker unless he is registered with SEBI. Further, as per the said circular, it shall be the responsibility of a stock broker to ensure that his clients are not acting in the capacity of a sub-broker unless he is registered with SEBI as sub-broker or is recognised by the stock exchange as a remisier. SEBI, vide another circular dated January 15, 2001 had advised stock brokers that their sub-brokers would be permitted to start business only after clearance and receipt of registration certificate from SEBI. The said circular also mentioned that if any person contravenes or attempts to contravene or abets the contravention of the said rule would be liable for punishment under section 24(1) of SEBI Act. Thus, I am convinced that the stock broker had placed/granted its trading terminals (which have been granted by the stock exchanges for its exclusive use only in authorized locations) to be kept in various unauthorized locations and also to be operated by unauthorized persons. Further, by doing so, it had enabled certain unregistered entities to carry on sub-broking business, as observed during the SEBI inspection. The said acts tantamount to the contravention of SEBI Circulars dated March 31, 1997, January 15, 2001 and October 22, 2001.

19. With regard to the allegation that the stock broker had failed to prescribe the code of internal procedures and conduct for the prevention of insider trading; the Enquiry Officer observed that no specific instance has been pointed out where the stock broker or any of its associated entities had traded as an “insider” after having access to any price sensitive information. Though, the Enquiry Officer had not viewed this as a serious issue, I am of the view that the same is not in accordance with the provisions of Regulation 12 of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992. The stock broker, being an intermediary recognized as such under Section 12 of the SEBI Act, and is very much active in the securities market, needs to comply with the aforesaid provision.

20. In view of the above, I find that the stock broker had delayed in making the payments/delivery of securities, had not segregated clients accounts and its account, made credits and debits for the purposes other than those identified, failed to collect adequate margins, failed to report spot deals entered into to the stock exchange, indulged in repeated trade transfers, placed its trading terminals in unauthorised locations and allowed unauthorised personnel to operate the same and failed to frame a code of internal procedures and conduct under Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992. The stock broker had failed to exercise necessary care and diligence that an intermediary is expected of. As an intermediary functioning in the securities market, the stock broker was required to abide by the rules, regulations and circulars framed by SEBI which govern its conduct in the securities market. These provisions are put in place for the smooth functioning and regulation of the securities market and for the protection of the investors in the securities market. I note that the Enquiry Officer had observed that *“.....it is clear that KNA have failed to function in the manner required of that of a diligent member of the securities market by failing to adhere to the various regulatory provisions of the Broker Regulations.”* After considering the violations committed by the stock broker, the Enquiry Officer had recommended that the certificate of registration granted to the stock broker be suspended for a period of 20 days. Considering the seriousness of the violations committed by the stock broker, I do not find any reason to disagree with the recommendation of the Enquiry Officer. Accordingly, the present enquiry proceeding initiated against the stock broker is disposed of as ordered hereinunder, in terms of the provisions of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.

21. In view of the forgoing, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 28(2) of the Securities and Exchange Board of India

(Intermediaries) Regulations, 2008, suspend the certificate of registration of the stock broker namely, M/s. Kedar Nath Agrawal (Registration Number INB 230056515), Member, National Stock Exchange of India Limited, for a period of twenty days.

22. This Order shall come into effect immediately on expiry of twenty one days from the date of the order.

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

Place: Mumbai

Date: November 18, 2009