

Securities Appellate Tribunal

Sebi vs Aadya Stocks Pvt. Ltd. on 13 January, 2006

Bench: Madhukar

ORDER Madhukar, Member

1. BACKGROUND 1.1 M/s. Aadya Stocks Pvt. Ltd. is a sub broker having SEBI Registration No. INS010700339 (hereinafter referred to as the sub-broker), affiliated to M/s MSE Financial Services Ltd., Member of The Stock Exchange, Mumbai.

1.2 Securities and Exchange Board of India (hereinafter referred to as SEBI) conducted an inspection of the books of accounts and other documents of sub-broker and observed certain irregularities allegedly committed by sub-broker, in violation of the following:

(a) SEBI Circular No. SMD/Policy/Cir-33/2000 dated July 27, 2000.

(b) SEBI Circular No. SMD/Policy/Cir-12/2002 dated May 17, 2002.

(c) SEBI Circular No. SMD/SED/Cir/93/23321 dated November 18, 1993.

(d) SEBI Circular No. SMD/Policy/Cir-11/1997 dated May 21, 1997.

(e) Regulation 15 read with Code of Conduct as specified in Schedule II of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992.

(f) Bye-laws, Business rules and regulations of the Stock Exchange.

2. Appointment of the Enquiry Officer 2.1 SEBI vide order dated December 08, 2003 thus appointed an Enquiry Officer under Regulation 5 of SEBI (Procedure for holding Enquiry by Enquiry Officer and Imposing penalty) Regulations, 2002 (hereinafter referred to as Enquiry Regulations) to enquire into the violations, if any, of SEBI (Stock Broker and Sub- Broker Regulations) 1992 (hereinafter referred to as Broker Regulations), the above mentioned SEBI Circulars and the Bye-Laws, rules and regulations of the Stock Exchange.

2.2 The Enquiry Officer after conducting the Enquiry in terms of the Enquiry Regulations found that the sub-broker has violated the Regulation and the SEBI Circulars as stated vide para 1.2 above and submitted his Enquiry Report dated July 09, 2004, recommending a major penalty of suspension of the Certificate of Registration for a period of four months against the sub-broker.

3. Show Cause Notice and reply of the Sub-broker 3.1 A copy of the said Enquiry Report was forwarded to the sub-broker along with a Show Cause Notice dated July 12, 2004 advising 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 sub-broker replied vide letter dated August 06, 2004 and while reiterating most of the submissions made before the Enquiry Officer, inter alia submitted that it may be pardoned for the lapses occurred on its part by not complying to the full extent and it may be

given a chance to improve its efficiency to comply to the full extent and requested not to initiate any action against it.

4. Consideration of the Issues and findings 4.1 I have carefully considered the facts and circumstances of the case. I have also considered the Enquiry Report and the submissions of the sub-broker made thereto.

4.2 As regards the findings of the Enquiry Officer, I note following as most significant observations :

(a) Non-maintenance of deposit of minimum margin by clients: I note that the inspection found that the sub-broker did not collect margins from the clients and did not furnish the Auditor certificate in quarterly basis.

The sub-broker in its reply submitted that the value margin requirements are very low and the same being settled by way of full payments/delivery being made on the following day.

I note that the Enquiry Officer found that the sub-broker has not ensured the maintenance of the mandatory minimum margins by the clients and the claim that it is regularly submitting collection of margins after the inspection will not rectify the violation which has already been committed. The Enquiry Officer further found that the sub-broker had not furnished the requisite auditor's certificate on quarterly basis during the period covered under inspection and thus rightly concluded that the sub-broker is guilty of violation of the provisions of SEBI Circular No. SMD/Policy/Cir-33/2000 dated July 27, 2000 and the provisions of Regulation 15 of the Broker Regulations.

(b) Delay in delivery of scrip/ payment to clients: I note that during the inspection it was found that the sub-broker had not transferred the scrips to the clients' account within the stipulated period of 48 hours from the relevant delivery date and were retained in the sub-broker's account beyond the stipulated period on many occasions. Same was the case of delay in payment to the clients.

The sub-broker reply submitted that the amount of Rs.760/- mentioned in the report is not payment due to the clients but payment due to MSE Financial Services Ltd. It was further submitted that it had enclosed in its letter dated May 2, 2003 the copies of clients letters requesting it to retain their payments and delivery.

I note that the Enquiry Officer found that for the shares such as Ambuja Cements, PCS Industries, Malar Hospitals etc. which were credited to the sub-broker's account in April/May 2002 were actually credited to client's account on June 3, 2002 and in most cases the delays were upto 8 days and above. I also note that the Enquiry Officer further found that similarly in case of payment, delay was from 6 to 36 days in various scrips as shown in the finding of inspection and thus correctly held the sub-broker guilty of violation of the provisions of SEBI Circular No. SMD/SED/Cir/93/23321 dated November 18, 1993.

(c) Non-segregation of clients funds from own funds: I note that during the inspection it was found that the sub-broker was maintaining only one account for receipts and payments pertaining to both itself and the clients.

The sub-broker in its reply dated August 6, 2004 did not mention anything with regard to the aforesaid allegation. However, the sub-broker in its reply dated January 20, 2004 to the Enquiry Officer submitted that a separate account is being maintained with ICICI Bank for clients.

I note that the Enquiry Officer found that there was no clear cut segregation of clients funds from its own funds and the balances at credit in the account did not indicate the quantum of amount pertaining to the client and the sub-broker and thus rightly concluded that the sub-broker is guilty of violation of the provisions of SEBI Circular No. SMD/SED/Cir/93/23321 dated November 18, 1993.

(d) Delay/ Non-payment of pay-in and margin dues: I note that during the inspection it was found that the sub-broker on several occasions had failed to meet its margin/obligation and had delayed in meeting its pay in to complete the settlement cycle, very often to the tune of more than Rs.1 lakh.

The sub-broker in its reply dated August 6, 2004 did not mention anything with regard to the aforesaid allegation. However, the sub-broker in its reply dated January 20, 2004 to the Enquiry Officer claimed that it is regularly meeting the margins and pay-in liabilities to exchange.

I note that the Enquiry Officer found that there are 24 instances where margin dues were not paid by the sub-broker and similarly in 27 instances there was failure in settlement in pay-in dues and thus rightly concluded that the sub-broker is guilty of violation of the provisions of clause C(3) of Code of Conduct for sub-brokers under Regulation 15 of the Broker Regulation.

(e) Delay/non-transferring of corporate benefits to the clients: I note that during the inspection it was found that the sub-broker had failed to pass the corporate benefits like dividends to its clients.

The sub-broker in its reply dated August 6, 2004 did not mention anything with regard to the aforesaid allegation. However, the sub-broker before the Enquiry Officer submitted that corporate benefits are being transferred regularly to clients.

I note that the Enquiry Officer found that the sub-broker failed to pass the corporate benefits such as dividends etc. to its clients and thus correctly concluded that the sub-broker is guilty of violation of the provisions of clause C(2) of Code of Conduct for sub-brokers under Regulation 15 of the Broker Regulations.

4.3 On a careful perusal of the charges, findings of inspection and enquiry and the submissions made by the sub-broker, I have no substantial reason to defer with the findings of the Enquiry Officer. Regulations, Rules and Circulars are primarily to ensure integrity of the capital market, which calls for full understanding and commitment of all concerned towards total compliance of Regulations. Sub-brokers being the important intermediary, are expected to do so flawlessly.

5. ORDER 5.1 Now therefore, I, having considered the nature and gravity of the charges established , the facts and circumstances of the case, the mitigating factors as explained above and the submissions made by the sub-broker thereto, in exercise of the powers conferred upon me under Section 19 of SEBI Act, 1992 read with Regulation 13(4) of SEBI (Procedure for Holding Enquiry by the Enquiry Officer and Imposing Penalty) Regulations, 2002, agree with the recommendation of the Enquiry Officer and hereby suspend the Certificate of Registration of M/s. Aadya Stocks Pvt. Ltd., sub-broker (Registration No: INSo10700339), affiliated to M/s MSE Financial Services Ltd., Member of The Stock Exchange, Mumbai, for a period of four months.

5.2 This order shall come into force after 21 days from the date of the order.