

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PKB/AO-93 /2009]

**UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF
INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR
HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING
OFFICER) RULES, 1995**

**IN RESPECT OF
KAPILA SECURITIES PRIVATE LIMITED
(PAN: AAACK3171B)
(SEBI Registration No. INB230782635)**

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred as "SEBI") conducted an inspection of books of accounts and other records of Kapila Securities Private Limited (hereinafter referred to as "noticee") through M/s G Jai & Associates, Chartered Accountants, covering the period from April 01, 2001 to March 31, 2003 to ascertain possible violations of the provisions of SEBI Act, 1992 and Regulations made there-under. The noticee is a member of National Stock Exchange Limited. During the course of Inspection, certain irregularities on the part of the noticee were observed. The alleged irregularities and the corresponding violation of the regulatory provisions are detailed below :

(i) Indulged in Fund Based Activities in violation of SEBI circular No. SMD/POLICY/CIR-6/97 dated May 7, 1997, Regulation 26(xx) of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 and Section 15 HB of the SEBI Act, 1992.

(ii) Non segregation of own and client transactions in separate bank account in violation of SEBI Circular No. SMD-1/23341 dated November 18, 1993,

Regulation 26(xiii) of SEBI (Stock Brokers and Sub-Brokers), Regulations, 1992 and Section 15HB of the SEBI Act, 1992.

(iii) Discrepancies in Know Your Client in violation of SEBI Circular No. SMD/POLICY/IECG/1-97 DATED February 11, 1997, SEBI Circular No. SMD/Policy/Cir-5/97 dated April 11, 1997, Regulation 26(xii) of SEBI (Stock Brokers and Sub-Brokers), Regulations, 1992 and Section 15HB of SEBI Act, 1992.

(iv) Delay in payment of funds and delivery of securities in violation of Clause B(1) of Code of Conduct for Stock Brokers specified under Regulation 7 of SEBI (Stock Brokers and Sub-Brokers), Regulations, 1992, Regulation 26(vi) of SEBI (Stock Brokers and Sub-Brokers), Regulations, 1992 and Section 15F(b) of SEBI Act, 1992.

(v) Irregularities in maintaining acknowledgement copy of contract notes in violation of Clause (i) of Regulation 17(1) of SEBI (Stock Brokers and Sub-Brokers), Regulations, 1992 , Regulation 26(iii) of SEBI (Stock Brokers and Sub-Brokers), Regulations, 1992 and Section 15A(c) of SEBI Act, 1992.

(vi) Dealing with unregistered sub-brokers in violation of Regulation 18B of SEBI (Stock Brokers and Sub-Brokers), Regulations, Regulation 26(iv) of SEBI (Stock Brokers and Sub-Brokers), Regulations, 1992 and Section 15HB of SEBI Act, 1992.

(vii) Operation of trading terminals by un-authorized persons in violation of SEBI Circular No. SMDRP/Policy/CIR-49/2001 dated October 22, 2001, Regulation 26(xix) of SEBI (Stock Brokers and Sub-Brokers), Regulations, 1992 and Section 15HB of SEBI Act, 1992.

(viii) Non appointment of compliance officer in violation of Regulation 18A of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992, Regulation 26(xx) of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 and Section 15 HB of the SEBI Act, 1992.

(ix) Delayed submission of audited reports in violation of SEBI Circular No. SMD/SED/0072/92 dated December 31, 1992, Regulation 26(xx) of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 and Section 15 HB of the SEBI Act, 1992.

APPOINTMENT OF ADJUDICATING OFFICER:

2. Shri. Amit Pradhan was appointed as Adjudicating Officer vide order dated August 30, 2006 under Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred as 'said Rules') to enquire into and adjudge upon the alleged violations committed by the noticee . Subsequent to the transfer of Shri. Amit Pradhan, Shri. D. Sura Reddy was appointed as Adjudicating Officer vide Order dated June 12, 2007. Subsequent to the transfer of Shri D. Sura Reddy, I was appointed as the Adjudicating Officer vide Order dated December 10, 2008.

NOTICE, REPLY & PERSONAL HEARING:

3. A Show Cause Notice (hereinafter referred as 'SCN') dated June 23, 2008 was issued to the noticee by the then Adjudicating Officer i.e Shri. D. Sura Reddy. In response to the SCN, the noticee vide letter dated August 18, 2008 replied to the said show cause notice. The reply of the noticee has been deliberated upon at length in the succeeding paragraph under the heading "Consideration of Issues and Findings Thereof".
4. Thereafter, in the principals of natural justice, vide notice dated January 15, 2009, personal hearing in the instant matter was fixed for February 3, 2009. The noticee vide letter dated January 21, 2009 requested for a fresh date of personal hearing. Therefore, the noticee was again called for personal hearing on February 10, 2009. The noticee vide letter dated February 4, 2009 authorized Shri. Prakash K. Shah to appear for personal hearing. Shri. Prakash K Shah appeared for personal hearing and made additional submissions.

CONSIDERATION OF ISSUES AND FINDINGS THEREOF:

5. I have carefully examined material available on record including the letter dated August 18, 2008 of the noticee and also the additional submissions

made during the course of Personal hearing. Now, I shall proceed to examine the allegations, the reply of the noticee and my findings thereof are as under :

Allegation No 1: It was observed that the noticee provided loans to P.C. Kapila & Co, sister concern of the noticee. The loan continued to be a part of noticees debit balance throughout the period of inspection. The noticee also provided loan of Rs. 1,60,000 to Niirbhay Bansal on March 9, 2002 and Rs. 49,998 to Shri. Surender Singh on July 7, 2001. Further, it was also observed that the noticee had provided a sum of Rs. 3,00,000 on 22.10.2001 to Anju & Co and Rs. 1,71,000 on 27.12.2001 to Shri. Bhagwan Bansal. These sums were provided by the noticee to its clients against debit balances. In light of which it is alleged that the noticee undertook fund lending /borrowing activities which is alleged to be in violation of SEBI Circular SMDRP/POLICY/CIR -6/97 dated May 7, 1997 and Regulation 26(xx) of SEBI (Stock Brokers & Sub Brokers), Regulations, 1992 and Rule 8(1)(f) and 8(3)(f) of Securities Contracts (Regulation), Rules , 1957.

Reply: It has been submitted that:

a) Regarding loan given to P.C. Kapila & Co.(sister concern) which remained in continued debit balance throughout the period covered under inspection, we state that Mr. Prem Kapila, proprietor of the said firm is the Chief promoter and dominant shareholder of our Company. All Sources of funds to our Company are provided by him and his family members either by way of subscription to the equity Share Capital or loans & advances. The details of his family accounts (other than subscription to equity share capital) in the Company are as under:

Sr. No.	Name of the client	Credit Balance as on 01/04/02	Credit Balance as on 31/03/03
1	P. C. Kapila (HUF)	189,925.07	189,925.07
2	B. M. Kapila	523,174.10	534,174.10
3	Phoolan Kapila	316,718.90	316,718.90
4	Namita Kapila	149,000.00	164,000.00
5	Mamta Kapila	26,438.49	41,438.49
6	Alka Kapila	466,582.15	553,205.90
7	Prem CH Kapila	326,499.70	272,143.40
Total		1,998,338.41	2,071,605.86

On perusal of the above table, it can be seen that his other family members have provided funds to the Company. We further submit that in case any financial exigencies that arise in our Company, he only makes arrangement of funds for the Company. He is also a guarantor to the Company for the purposes of Bank Guarantee requirements of the Company. For rendering such services, he has not been paid any commission and no interest is either paid or recovered from him or from any of his family members mainly because it is his own Company.

b) Regarding amount paid to others, we state as under:-

(i) An amount of Rs.1,60,000/- was paid to Mr. Nirbhay Bansal on 09/03/2002 at the request of his father Shri Rama Shanker Bansal who is our old constituent. At the relevant time, there was credit balance of Rs. 1,58,873/25 in his account (Client code PN022) with us and to facilitate their requirements , this amount of Rs.1, 60,000/- was given to his son Mr. Nirbhay Bansal.. Subsequently i.e. on 26/03/2002 this amount was returned by Mr. Nirbhay Bansal to us and on the same day, we paid the dues of Shri Rama Shanker Bansal. A copy of their ledger account is enclosed hereto marked as *Exhibit A* and *B* respectively.

(ii) An amount of Rs. 49,998/- was paid to Mr. Surender Singh on 07-07-2001 as a temporary loan for his emergency personal needs and he returned Rs.30,000/- on 26/09/2001 and Rs.16,998/- on 12/10/2001. This amount was given for a temporary period of three months for his personal needs and no interest was charged since it was not for any business motive / intent.

(iii) An amount of Rs. 3, 00,000/- was paid to Anju & Co. on 22 / 10 / 2001, our old client (Client code PA 018) who did regular trading through us and maintains running account with us. There was credit balance of Rs. 1, 93,490/- in his account on 21/10/2001 with us and credit balance of Rs.1,20,848 / 46 with our sister concern M/s P.C. Kapila & Co.. He requested us to make payment of Rs. 3,00,000/- against his credit balance considering balance in both the accounts together and authorized us to pass necessary journal entry in the respective Books of Accounts. However the

said journal entry was passed by us at the end of the year i.e. 31st March 2002 instead of 22/10/2001. A copy of his ledger account maintained with us is enclosed hereto marked as *Exhibit C*.

(iv) An amount of Rs. 1,71,000/- was paid to Shri Bhagwan Bansal (Client Code PS024) on 27/12/2001 at his request against credit balance of Rs. 6,21,917 /94 in his wife Smt. Usha Rani Bansal's account. They had authorized us to treat both the account as family account for trading purposes for their operational convenience. In order to facilitate their requirements and to maintain on going good business relationship, we paid him Rs. 1,71,000 /- even though there was a debit balance of Rs. 36,715/61 in his account. His debit balance was adjusted by him by way of sale of shares in his account and was brought in credit on 24/01/2002 (within a month). We state and confirm that no interest was paid or recovered from them.

c) Under the aforesaid circumstances, we submit that the transactions in the nature of providing loans, which were observed during the course of inspection, do not relate in any manner to the fund based activity as alleged or otherwise but were genuinely undertaken in connection with or incidental to the securities business transactions carried on by us. In the above context, we would also like to reproduce the observations made in the Inspection Report under para 2.00 for ready references as under:

"Except transactions mentioned in above tabulations, the trading member has not undertaken any specified fund based activities like leasing, hire, purchase, bill discounting, providing loans and advances, inter corporate deposits etc. during the period covered by our Inspection"

d) In view of our aforesaid submissions, we state that the borrowing / lending being done by us is in connection with or incidental to / consequent upon securities business. The quantum of borrowings / lending made by us are also within the prudential norms in relation to our operations and are not in any manner excessive to impact the safety of our operations. We thus state that we are not in violation of SEBI circular No. SMD/POLICY/CIR-6/97 dated May 7, 1997, section 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "Act") and Regulation

26(xx) of SEBI (Stock Brokers and Sub brokers) Regulations, 1992. (Hereinafter referred to as the "Regulation") and therefore no charge be levied against us in this regard.

Finding: I observe that major dealings of the noticee is with his sister concern and other close relatives. Further, the noticees other dealings in this regard is also observed to be with old constituents who had relevant credit balances in their respective accounts. Further, the said dealings of the noticee appears to be in connection with and incidental to the securities business. Therefore, I tend to give benefit of doubt to the noticee and do not find him guilty of violating SEBI Circular No. SMD/POLICY/CIR-6/97 dated May 7, 1997, Regulation 26(xx) of SEBI (Stock Brokers and Sub-Brokers), Regulations, 1992 and the provisions of Rules 8(1)(f) and 8(3)(f) of SC(R) Rules which require the brokers to not take up any personal financial liability.

Allegation No. 2: It was also observed that the noticee did not segregate own and client funds in separate bank accounts. Though there were separate bank accounts operated by the noticee, but there were instances when transactions relating to clients were routed through noticees own fund accounts and in some cases noticees own transactions were routed through noticees clients account. Therefore, it was alleged that noticee did not segregate own and client funds in separate bank account which is alleged to be in violation of SEBI Circular No. SMD-1/23341 dated November 18, 1993 and Regulation 26(xiii) of SEBI (Stock Brokers & Sub Brokers), Regulations, 1992.

Reply: The noticee submitted that separate bank accounts are maintained for own and client funds , and have always followed a practice of depositing clients' money in the Bank account separately / specifically opened for keeping funds of the clients' .

It is pertinent to note that in the regular course of our broking activity, our own funds to the extent of around Rupees fifty lacs are lying in the clients' account to meet with any exigency of 'pay in' obligations of the Exchange and under no circumstances, we have withdrawn funds in excess of own

funds lying in the Clients' account. The above facts have also been substantiated under para 5.07 on page no 6 of the Inspection Report which is reproduced hereunder for ready reference.

“ Utilization of client funds

100% checking of all the bank accounts of the trading member for the sample period 01.04.2002 to 31.03.2003 was done to form an opinion about misuse of client funds. During the course of our checking it was observed that trading member has never withdrawn funds in excess of amounts lying to the credit of the trading member in the constituents' bank accounts (including accrued brokerage).

Date wise details of use of funds from client accounts by the trading member for the period 01.04.2002 to 31.3.2003 is given in Annexure V in page no. 33 to 44 forming part of this report.”

Overall we would like to clarify that the business receipts (other than from clients) have been deposited in client account considering the requirement of funds in client account. However at no time the client's funds have been used for our business purposes. Whenever payments (other than to clients) or business expenses have been routed through client's bank account, we have ensured that it is not in excess of corresponding receipts (other than from clients) in the said bank account.

Finding: It is noted from the reply that the noticee did maintain separate bank accounts for clients and there were records and books of accounts were kept to distinguish client funds from own funds. I also observe that in the inspection report itself the Inspecting Authority has mentioned that;

“ 100% checking of all the bank accounts of the trading member for the sample period 01.04.2002 to 31.03.2003 was done to form an opinion about misuse of client funds. During the course of our checking it was observed that trading member has never withdrawn funds in excess of amounts lying to the credit of the trading member in the constituents' bank accounts (including accrued brokerage).”

Therefore, I find that the violations are not conclusively established.

Allegation No. 3: It was observed that during the inspection that the noticee could not make available 34 client registration forms. Further, only 19 client agreement forms could be produced during the inspection. Further, it is also observed that the noticee obtained 22 client agreements subsequent to the inspection. This indicates that the noticee has not maintained proper database of its respective clients which is alleged to be in violation of SEBI circular no. SMD/Policy/IECG/1-97 dated February 11, 1997 and SMD/Policy/Cir-5/97 dated April 11, 1997.

Reply: (a) In this regard we state that we have 131 clients registered with us at the relevant time. Out of these, registration forms for 97 clients were produced during inspection. The forms pertaining to 34 clients were not readily available at that time and therefore could not be produced. We would like mention that these 34 clients were those clients who had executed only few transactions in the past with us and therefore their registration records, since not required, were not readily available at the time of inspection.

(b)As regards agreements with clients, it is submitted that we had produced 19 agreements at the time of commencement of inspection. Another 34 agreements were produced during inspection and further 2 agreements after the inspection. Thus we have produced total 55 agreements of the Clients who were active at the relevant time. We state that the remaining clients had done only few stray transactions in the past and have not done any business with us since then and therefore obtaining an agreement in such cases at that stage was not possible and in our view would not serve any useful purpose. Considering Regulatory requirements, we have since then strengthened this area of procedure and presently we are completing every pinch of documentary work before initiating any order execution of the Client. We respectfully submit that the deficiencies pointed out in client registration form are only technical in nature. However we assure your honour that we shall be more careful in obtaining complete documents only at the time of registration of the Clients.

Finding: I do not find merit in the reply of the noticee to the extent that the registration forms of 34 clients were not available at the time of the inspection. Further, I also do not concur to the admission of the noticee that deficiencies pointed out in the client registration forms are technical in nature. Therefore, I do not find the explanation of the noticee satisfactory and find that the noticee has violated the provisions of SEBI Circular No. SMD/POLICY/IECG/1-97 dated February 11, 1997 and SMD/Policy/Cir-5/97 dated April 11, 1997, Regulation 26(iii) of SEBI (Stock Brokers and Sub-Brokers), Regulations, 1992 and Section 15A(c) of SEBI Act, 1992.

Allegation No. 4: It shall be noted that in 55 instances during the period 1.4.2001 to 31.3.2003 there were delays ranging from 1 day to 413 days in payment of funds to the clients. The noticee had contended that these clients had authorized it to hold their funds and delivery, so the delay is not because of the noticee. But it was observed that there was no trading between the date of relevant payout and date of payment to clients and hence noticees contention of retaining funds of clients is not valid. Further, it was also observed that in 90 cases there was delay in delivery of security ranging from 1 -75 days. Out of these 90 cases, the noticee did not hold authorization letters from clients in 56 cases to retain securities in its Beneficiary account beyond 48 hours of the payout date. This is alleged to be in violation of Clause B(1) of Code of Conduct for Stock Brokers as specified under Regulation 7 of SEBI (Stock Brokers & Sub Brokers), Regulations, 1992 and Regulation 26(vi) of SEBI (Stock Brokers & Sub Brokers), Regulations, 1992.

Reply: In this regard, we submit our division wise clarification as under:

a) Part I of Annexure VIII on page no 48 of the Inspection Report lists 46 cases of such delays ranging from 1 day to 81 days in payment of funds to the clients. We reproduce the relevant column of the aforesaid table for ready reference as under:

Sr. No.	Client Name	Delay in Days
1	MONEY GROTH INVEST.	81
2	LOKESH NANDA (HUF)	65
3	KRISHAN KR. GARG	52
4	JAGAN NATH (HUF)	41

5	P.N. BERI	37
6	DEEPAK JAIN	29
7	SANJEEV GUPTA	26
8	SANDEEP KINGER	25
9	ADITYA CHOPRA	20
10	SUDHIR KR. HATWAL	19
11	A.S. GARG	18
12	BHANU JAIN (HUF)	18
13	A.S. GARG	17
14	KRISHAN KR. GARG	17
15	RAJAN BANSAL	15
16	AMAR PAL SINGH SACH	12
17	SHALINI BANSAL	12
18	SATISH MANCHANDA	11
19	BHANU JAIN (HUF)	11
20	KRISHAN KR. GARG	10
21	MOHINI BERRY	10
22	BANWARILAL SARAF	9
23	HARASH DEEP BEARI	9
24	RAJESH MISHRA	9
25	DEEPAK JAIN	8
26	KRISHAN KR. GARG	8
27	HEMLATA GUPTA	7
28	KAMAL DEEP BERI	7
29	SUDHIR KR. HATWAL	7
30	MOHINI BERRY	6
31	R.K. JAIN & FAMILY (HUF)	6
32	SURENDER SINGH	6
33	VIJAY RAJ INVEST. CONST.	5
34	ANKIT GUPTA	5
35	ADITYA CHOPRA	4
36	USHA RANI BANSAL	4
37	A.S. GARG	3
38	A.S. GARG	3
39	A.S. GARG	3
40	ADITYA CHOPRA	3
41	B.K. KHANNA	3
42	KRISHAN KR. GARG	3
43	MUKUL SRIVASTAVA	3
44	SHRI BHAGWAN BANSAL	3
45	MOHINI BERRY	2
46	A.S. GARG	1

On perusal of the same, it can be seen that in 27 cases, the alleged delay is up to 10 days, in 12 cases the alleged delay is between 11 to 25 days, in 4 cases alleged delay is between 26 to 41 days and in 3 cases the alleged delay is between 52 to 81 days. With regard to delay, we state that the delay in payment is mostly due to mandate of the client to withheld funds for possible subsequent transactions or as margin money. In the case of Lokesh Nanda (HUF) where delay shown is of 65 days, we clarify that the delay is due to withholding funds in order to cover the dues from Associates

Company of the clients, M/s. Leo Industrials Ltd. which owed Rs.2,70,552/50 to us from 30/04/2001 onwards.

Part II of Annexure VIII on page 49 of the Inspection Report list 9 cases where the payment is made in parts to the client. We reproduce the relevant column of the aforesaid table for ready reference as under:

Delay in payments to clients (Payments in parts)		
1	DEEPAK KR. GARG	10
		15
2	MONEY GROTH INVEST.	4
		8
		15
3	MONEY GROTH INVEST.	
4	PAYAL GUPTA	41
5	PROMPT BUILD CAP (P) LTD.	46
		48
		63
		103
		138
		163
		413
6	RAJESH ARORA	6
		145
7	RAMA SHANKAR BANSAL	59
		79
8	RAMA SHANKAR BANSAL	3
		7
9	ROHIT GUPTA	NIL
		6
		19
		27

Out of those 9 cases, delay in cases at Serial number 1, 2,3,6,8 & 9 is due to specific request of the respective client to withhold funds for margin money or for subsequent transactions. The delay in case cited at Serial number 4 is due to withholding payments at the request of client in order to cover the dues from Shri Padam Chand Gupta, father of the client who owed Rs. 1,84,950/- to us. The delay in case cited at Sr. number 5 is due to withholding payment at the request of the client in order to cover the dues from M/s. Asia Metals Corporation (Rs. 9,89,807/65) and Ms. Hem Lata Gupta (Rs. 1,16,837/-) who owed money to us. The delay in case cited at Sr. no's 7 is

also due to withholding payments at the request of the clients to cover the dues from the HUF of the client which owed us Rs. 2,16,527/- Considering the above facts, we would like to mention that there has been no intention to withhold funds of the client without any sufficient reasons but as a Risk management measure and no such case other than cited above has been pointed out in the report. Annexure IX on page 50 of the Inspection Report list 90 cases of delay in delivery of Securities. We reproduce the relevant column of the aforesaid table for ready reference as under:

Sr. No.	Client Name	Delay in Days
1	RAGHAV RAO	75
2	RAGHAV RAO	75
3	VINITA SOOD	23
4	V. DASS GUPTA	19
5	V. DASS GUPTA	19
6	V. DASS GUPTA	16
7	V. DASS GUPTA	15
8	R.K. & CO.	13
9	P.S. AGGARWAL & CO.	12
10	GAURI SHANKAR MUKIM	10
11	ANIL KR. AGGARWAL	7
12	P.K. AGGARWAL & CO.	7
13	GARG INVESTMENT	7
14	GARG INVESTMENT	7
15	P.K. AGGARWAL & CO.	7
16	P.K. AGGARWAL & CO.	7
17	R.K. & CO.	7
18	SHAIL BHALLA	7
19	VINITA SOOD	7
20	VINITA SOOD	7
21	DEEPAK KR. GARG	6
22	GANPATI SEC.	6
23	V. DASS GUPTA	5
24	ANIL KR. AGGARWAL	5
25	R.K. & CO.	5
26	SUMITRA RANI	5
27	VINITA SOOD	5
28	VINITA SOOD	5
29	RAGHAV RAO	4
30	P.K. AGGARWAL & CO.	4
31	PRADEEP BHALLA	4
32	VINITA SOOD	4
33	VINITA SOOD	4
34	VINITA SOOD	4
35	GANPATI SEC.	3
36	P.K. AGGARWAL & CO.	3
37	SUKHBIR SINGH	3
38	VIMLA GUPTA	3
39	PRADEEP BHALLA	3
40	VIJAY RAJ INVEST.	3
41	JOGINDER KR. KHANNA	2
42	P.K. AGGARWAL & CO.	2

43	P.K. AGGARWAL & CO.	2
44	P.K. AGGARWAL & CO.	2
45	P.K. AGGARWAL & CO.	2
46	P.K. AGGARWAL & CO.	2
47	P.K. AGGARWAL & CO.	2
48	P.K. AGGARWAL & CO.	2
49	P.K. AGGARWAL & CO.	2
50	P.K. AGGARWAL & CO.	2
51	P.K. AGGARWAL & CO.	2
52	P.S. AGGARWAL & CO.	2
53	P.S. AGGARWAL & CO.	2
54	P.S. AGGARWAL & CO.	2
55	RAGHAV RAO	2
56	RAGHAV RAO	2
57	RAGHAV RAO	2
58	SHALINI CHAWLA	2
59	S.K.CHOPRA (HUF)	2
60	VIJAY CHAWLA	2
61	VIJAY CHAWLA	2
62	V. DASS GUPTA	2
63	V. DASS GUPTA	2
64	JOGINDER KR. KHANNA	2
65	JYOTI RAO	2
66	P.K. AGGARWAL & CO.	2
67	R.K. & CO.	2
68	RAM MURTI	2
69	VIMLAISH JAIN	2
70	JOGINDER KR. KHANNA	2
71	VIJAY RAJ INVEST.	2
72	P.K. AGGARWAL & CO.	2
73	VINITA SOOD	2
74	JOGINDER KR. KHANNA	2
75	VINITA SOOD	2
76	JOGINDER KR. KHANNA	2
77	VIJAY CHAWLA	2
78	JOGINDER KR. KHANNA	2
79	VIMLAISH JAIN	2
80	GARG INVESTMENT	1
81	GARG INVESTMENT	1
82	P.K. AGGARWAL & CO.	1
83	P.K. AGGARWAL & CO.	1
84	PADAM CHAND GUPTA	1
85	PRADEEP BHALLA	1
86	SUDHIR KR. HATWAL	1
87	V. DASS GUPTA	1
88	V. DASS GUPTA	1
89	VIMLAISH JAIN	1
90	VIMLAISH JAIN	1

On perusal of the above, it can be seen that in 80 cases the delay is up to 7 days, in 8 cases delay is between 10 to 23 days and in 2 cases delay is for 75 days. The aforesaid delay in delivery is mostly at the client's request where the client himself intends to sell the shares within short period of time. The delivery is invariably withheld at their request only. We state and confirm that all the concerned parties had requested us for retaining their shares as

margin/or for sale within short period. In the case of delay of 75 days in two cases, the delivery was withheld at the request of the client in order to retain these shares in margin against trading by Smt. Jyoti Rao, mother of the client. There is not a single case mentioned in the report where the shares have been withheld without justifiable reasons and not at all for any unauthorized use. Hence we ought not to be faulted on this ground.

Finding: In view of the explanation provided by the noticee and number of instances, I give benefit of doubt to the noticee. Further, no complaint by any of the client of the noticee regarding delay in payment of funds and delay in delivery of shares is on record. Therefore, I do not hold the noticee having violated the provisions of Clause B(1) of Code of Conduct for Stock Brokers specified under Regulation 7 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992, Regulation 26(vi) of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992.

Allegation No. 5 : It was observed that the contract notes were sent through ordinary post and acknowledgements from the clients have not been obtained by the noticee, therefore it could not be established that the noticee did issue the contract notes to the clients within 24 hours of the execution of the trade. The names of authorized signatories to contract notes have not been reported to the exchange and the contract notes do not provide for the order time. The contract notes also do not bear a running serial number which initialize at the beginning of the calendar year and your stamps were not affixed on the contract notes which is alleged to be in violation of Clause (i) of Regulation 17(1) and Regulation 26(iii) of the SEBI (Stock Brokers & Sub Brokers), Regulations, 1992.

Reply : We humbly submit that the deficiencies pointed out in the contract notes are only of technical nature. All the contract notes were duly stamped and delivered to the clients by us invariably within 24 hours of the execution of the trade. The Contract Note issued by us is on the basis of the format as prescribed by NSE. We confirm that we have followed the proper procedure and compliances in this regard. We would like to add that in T+2 environment, share and money obligations are settled very fast and therefore mistakes / objections get noticed and rectified immediately. The

very fact that the concerned clients accepted and retained and acted upon the contract notes show that they had accepted the contract notes in toto and given proper discharge to us. There has not been a single case of complaint against us on this count. We confirm that we had an adequate internal control system to check the consumption of stamps.

Finding: I observe that the noticee has not provided any concrete evidence with regard to his claim of the contract notes being delivered to the clients within 24 hours of the execution of the trade. Besides, the noticee has not responded and provided specific reply to the charges that the contract notes issued did not bear order time, running serial number, and names of authorized signatories not being provided to the stock exchange. Though the noticee claims that there has been no complaint from his clients on this client, however, I feel that this does not absolves the noticee from not carrying out proper due diligence. Keeping all this in view I find noticee guilty of violating Clause (i) of Regulation 17(1) and Regulation 26(iii) of SEBI (Stock Brokers and Sub-Brokers), Regulations, 1992.

Allegation No. 6: On scrutinizing the deliveries of shares coming in and delivered to the clients it is observed that the deliveries were being received in the clients accounts from other Depository Participant , which indicates that the clients were passing on the trades done through the trading member to their ultimate clients. Therefore, it is alleged that the noticee has dealt with sub - brokers which is in violation of Regulation 18B and Regulation 26(xiv) of the SEBI (Stock Brokers & Sub Brokers), Regulations, 1992.

Reply: We clarify that at the relevant time, we did not have any sub-brokers/intermediaries dealing through us. We have entered into agreements with these parties' as client only and not as sub - broker. As regards some indirect deliveries mentioned at pages 54 & 55 of Annexure XI of the inspection report, we have gone through the cases mentioned therein. In most of the cases the deliveries are coming from the close relatives of the concerned client. We have enquired about this from the concerned clients and on that basis submit our submissions as under :-

Part I: Details of Deliveries coming from other than client's DP a/c's

a) Anju & Co. (Two cases.)

The proprietor of this firm is Mr. Arun Kumar Gupta. The two cases of deliveries mentioned are from Arvind Kumar Gupta and Lakshmi Chand Gupta, both uncle of Mr. Arun Kumar Gupta.

b) Anshu Gupta (Three cases).

In two cases the delivery has come from the account of Mr. Parveen Kumar Gupta HUF, uncle of Mr. Anshu Gupta. In the third case the delivery has come from. Smt. Vimla Gupta, mother of Anshu Gupta.

c) Ganpati Securities.

The delivery mentioned in this case has come from Mr. Rajeev Goel, relative of the client.

d) Garg Investments (13 cases).

The proprietor of this firm is Ms. Rachna Aggarwal. The DP account no. of this client is wrongly mentioned in the report as 10000238. The correct number of this client a/c is 10000617. The delivery in 8 out of 13 cases mentioned in the report has come from the correct DP a/c of the client. The delivery in other 5 cases has come from relatives, friends of the client. This client had large number of dealing with us. The deliveries coming from other then client's own DP a/c are only in 5 cases which are quite negligible.

e) P.K. Aggarwal & Co. (9 cases).

The client also had large number of dealings with us. The deliveries from other then client his own DP a/c have come in from 7 parties only of which three parties are close relatives of the client. The delivery in other 4 cases is from friends of the client. Considering the volume of business with this client, the stray cases of deliveries coming from other DP accounts deserve to be ignored.

f) P.S. Aggarwal & Co. (16 cases).

Out of 16 cases deliveries in 5 cases have come from the DP a/c of Smt. Rachna Aggarwal, wife of Shri.P.S. Aggarwal. This client also had

large number of dealings with us during financial year 2001-2002. In the course of his dealing with us he may have sold shares of his other relatives or friends through his account maintained with us. But the number of such cases is so small to deserve any adverse attention.

g) R.K. & Co. (4 cases)

This client had good volume of business with us during financial year 2002 - 2003. In 4 cases he has delivered shares belonging to his close relatives and friends to meet his delivery obligations.

h) Vimla Gupta (2 cases)

This client had very good volume of business during financial year 2002 - 2003. In two cases, the client has delivered shares from other than own DP a/c to meet the delivery obligations.

We would like to submit that in the dealings with all the about clients, the deliveries have been given by us to the respective DP a/c of the concerned client. No case has been pointed out in the report which states that the delivery has been given by us in other than the client's own DP a/c.

Part II: Deliveries given in DP a/c's of other than client.

a) M/s. Vijay Raj Investment (12 cases)

In 5 cases the delivery has been given to the DP a/c of Asha Anand & M. L. Anand, relatives of the client, Mr. Vijay Kumar, at the request of the client. In 3 cases the delivery has been given to the DP a/c of another close relative Smt. Rama Devi. In the other 4 cases, the delivery has been given by us at special request of the client who wanted to meet his obligations towards, these parties. The cases pointed out are quite negligible as compared to the volume of business of the client with us.

We would like to mention that we are being very careful at present in the matter of receiving or giving deliveries from / to DP a/c's of other than clients. We assure you that such things will be completely

avoided in future. We also like to assure that our dealings with our clients are as clients only and not as sub - brokers.

Finding: I do not find the explanation of the noticee satisfactory. The acceptance of delivery from third parties, even though from close relatives /friends undermines the regulatory mechanism provided by SEBI for the intermediaries to follow. The violation of this nature needs to be dealt with heavily to maintain the sanctity of regulatory mechanism. Hence I find that the noticee has violated the provisions of Regulation 18B and Regulation 26(iv) of the SEBI (Stock Brokers & Sub Brokers), Regulations, 1992.

Allegation No. 7: It was observed that your trading terminals were operated by persons other than the person in whose name user ID's have been sanctioned. It was also observed that you had placed your trading terminal at the office of P.S. Aggarwal & Co. for the period 30.10.2000 to 22.11.2001. It shall also be noted that P.S. Aggarwal & Co. is not registered with SEBI. This is in violation of the provisions of SEBI Circular No. SMDRP/Policy/Cir-49/2001 dated October 22, 2001 and Regulation 26(xix) of the SEBI (Stock Brokers & Sub Brokers), Regulations, 1992.

Reply: We clarify that our trading terminals are operated by authorized persons only and no unauthorized person is allowed to operate the terminal. Further with regard to granting of terminal at the location of M/s P. S. Aggarwal & Co office is concerned, we state that our Mainframe Computer System (Central Server) is located at our head office, from where complete online surveillance facilities are setup on real-time basis to monitor the trading limits, margin requirements, risk management control systems etc. of all the places. Therefore, the trading terminals located are under our direct control. We further state that the terminal at the aforesaid location was installed after taking prior approval from the Exchange.

Finding: I do not find the explanation of the noticee satisfactory. Besides, the noticee has claimed that no unauthorized person operated the terminal of the noticee, but the noticee has not furnished any names of such authorized persons operating the trading terminal. Further, the noticee has

claimed that the operation of the terminal at the location of M/s P. S. Aggarwal & Co office was installed after taking prior approval from the Exchange. But, no evidence to this effect has been provided. Hence I find that noticee has violated provisions of SEBI Circular No. SMDRP/Policy/CIR-49/2001 dated October 22, 2001, Regulation 26(xix) of SEBI (Stock Brokers and Sub-Brokers), Regulations, 1992.

Allegation No. 8: It was also observed that the noticee has not appointed any compliance officer which is alleged to be in violation of Regulation 18A and Regulation 26(xx) of the SEBI (Stock Brokers & Sub Brokers), Regulations, 1992.

Reply: In this regard, we state that our Managing Director, Shri Prem Chand Kapila is the Compliance Officer of our Company since inception and also at present which is on record with the NSE.

Finding: I give the benefit of doubt to the noticee and do not hold the noticee guilty of having violated the provisions Regulation 18A and Regulation 26(xx) of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992.

Allegation No. 9: It is observed that there has been a delay in submission of audited financial statements with the Stock Exchange which is in violation of SEBI Circular No. SMD/SED/0072/92 dated December 31, 1992 and Regulation 26(xx) of the SEBI (Stock Brokers & Sub Brokers), Regulations, 1992.

Reply: (a) In this regard, we state that as reported in the Inspection Report under para 27 on page no 14, we had submitted the Audit Reports for the financial year 2000-01 & 2001-02 as under:

Financial Year	Due Date	Date of Submission
2000-01	30-09-2003	21/10/2001
2001-02	30-09-2004	04/10/2002

(b) As per SEBI Cir. NO. SMD/SED/0072/92 dated December 31, 1992 Para 7 of the circular enjoins that audit of the accounts of the members of stock

exchanges should be completed within 6 months from the closing of the books of accounts. In individual cases, an extension for a period not exceeding 3 months may be granted by the concerned Executive Director/Secretary of the stock exchange, if he is satisfied that adequate reasons exist for granting such an extension.

(c) Attention is also invited to Para 8 of the circular which requires stock exchanges to evolve a system of monitoring so that it is ensured that all their active members submit the audited report within the prescribed time. These reports are required to be examined and appropriate action should be taken on deficiencies by the stock exchanges.

(d) In the given case, NSE vide its circular no. 220 bearing Ref. no. NSE / MEM / 2971 dated November 05, 2001 and circular no. 298 bearing Ref. No. NSE / MEM / 3667 dated October 08, 2002 had extended the time up to November 30, 2001 (for the financial year 2000-01) and October 31, 2002 (for the financial year 2001-02) respectively. We have submitted the Report on 21/10/2001 (for the financial year 2000-01) and on 04/10/2002 (for the financial year 2001-02). Thus we had filed audited financial statements in time with the Stock Exchanges. Copy of the aforesaid circular are enclosed hereto marked as *Exhibit D* and *E* respectively.

Finding: I observe that though the noticee claims of having submitted the audit reports for the financial year 2000-2001 and 2001 -2002 on time and on going through the exhibit D & E submitted by the noticee. Further, the noticee has also provided the acknowledgement of the receipt of the said audit reports by National Stock Exchange. The said acknowledgement for the financial year 2001 -2002 corroborates with the Exhibit D & E issued by National Stock Exchange which provided extension of time for submission of Audit Reports . However, the same is not true with the evidence provided for the financial year 2000- 2001. Therefore , considering that issue pertains to recent period and of having provided the acknowledged copy for the year 20001- 2002 , I give the benefit of doubt to the noticee and find that the noticee has not violated SEBI Circular No. SMD/SED/0072/92

dated December 31, 1992 and Regulation 26(xx) of the SEBI (Stock Brokers & Sub Brokers), Regulations, 1992.

6. In light of the aforesaid, I note that the noticee has violated SEBI Circular No. SMD/POLICY/IECG/1-97 dated February 11, 1997 and SMD/Policy/Cir-5/97 dated April 11, 1997, Regulation 26(iii) of SEBI (Stock Brokers and Sub-Brokers), Regulations, 1992, Clause (i) of Regulation 17(1) and Regulation 26(iii) of SEBI (Stock Brokers and Sub-Brokers), Regulations, 1992, Regulation 18B and Regulation 26(iv) of SEBI (Stock Brokers and Sub-Brokers), Regulations, 1992, SEBI Circular No. SMDRP/POLICY/CIR - 49/2001 dated October 22, 2001 and Regulation 26(xix) of SEBI (Stock Brokers and Sub-Brokers), Regulations, 1992, for which penalty is imposable in terms of Section 15HB of the SEBI Act, 1992 and Section 15 A (c) of the SEBI Act, 1992.
7. The provisions of section 15HB, 15A(c) of SEBI Act, 1992 as prevailing at the relevant time is reproduced hereunder:

Penalty for contravention where no separate penalty has been provided.

Section 15HB: *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

Penalty for failure to furnish information, return, etc.

Section 15A. *If any person, who is required under this Act or any rules or regulations made thereunder, –*

(c) to maintain books of account or records, fails to maintain the same, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

8. The next issue for consideration is as to what would be the monetary penalty that can be imposed on the noticee under Section 15HB, 15A(c) of the SEBI Act, 1992 for violation of various SEBI Circulars and other provisions of SEBI (Stock Brokers and Sub-Brokers), Regulations, 1992.

9. While imposing monetary penalty it is important to consider the factors stipulated in section 15J of SEBI Act , which reads as under:

“15J - Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default.”*

10. It shall be noted that the amount of disproportionate gain or unfair advantage cannot be computed from the material on record. Further, loss caused to an investor or group of investors also cannot be quantified on the basis of the available facts and data. Further, I also note that there was no repetitive default on the part of the noticee. However, it is important and pertinent to mention here that the noticee being a market intermediary is guided by certain norms established for proper and efficient functioning of the market structure. The first step in achieving better and transparent market system, which out to be investor friendly is the proper due-diligence and compliance with the norms set by SEBI by way of SEBI Regulations and Circulars. I find that the noticee has failed in carrying out proper due - diligence, the failure of which may not be quantified but is one of the main pillars in ensuring efficient & transparent functioning of the market.
11. From the forgoing paragraphs it is now established that the noticee failed to exercise proper due -diligence and comply with the provisions SEBI Circulars and provisions of SEBI (Stock Brokers and Sub Brokers), Regulations, 1992. Considering the facts and circumstances of the case and the violation committed by the noticee, I find that a penalty of Rupees 2,00,000/- (Rs. Two Lakhs only) for violating Section 15HB of the SEBI Act, 1992 and a penalty of Rupees 1,00,000/- (Rs. One Lakh only) for violating Section 15 A(c) of the SEBI Act, 1992 on M/s Kapila Securities Private Limited. I feel that the consolidated penalty of Rupees 3,00,000/- (Rs. Three

Lakh only) would be commensurate with the violation committed by the noticee.

ORDER

12. Considering the facts and circumstances of the case, in terms of the provision of Section 15HB and Section 15A(c) of SEBI Act and Rule 5(1) of the Rules, I hereby impose a penalty of Rs. 3,00,000/- (Rupees Three Lakhs only) on M/s Kapila Securities Limited for violating the provisions SEBI Circulars , provisions of SEBI (Stock Brokers and Sub Brokers), Regulations, 1992 and SEBI Act , 1992.
13. The penalty shall be paid by way of demand draft drawn in favour of “SEBI - Penalties Remittable to Government of India” payable at Mumbai within 45 days of receipt of this order. The said demand draft shall be forwarded to Shri. Suresh B Menon , Chief General Manager, Securities and Exchange Board of India, Plot No. C4-A, ‘G’ Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051.
14. In terms of the provisions of Rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this order are sent to M/s Kapila Securities Limited and also to Securities and Exchange Board of India.

Date: 07/08/2009
Place: Mumbai

P. K. BINDLISH
ADJUDICATING OFFICER