

ORDER

**UNDER THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND
IMPOSING PENALTIES BY THE ADJUDICATING OFFICER)
RULES, 1995**

AGAINST

**M/s. MALIRAM MAKHARIA FINSTOCK PRIVATE LIMITED
(PAN NO. AACCM1102E)**

BACKGROUND:

1. M/s. Maliram Makharia Finstock Pvt. Limited (for brevity's sake, hereinafter referred to as MMF) is registered with the Securities and Exchange Board of India, 1992 (SEBI) as a broker and is the member of the Stock Exchange, Mumbai (BSE) with SEBI Registration No. INB 010972034.
2. An inspection of the books of account, documents and other records of MMF was conducted by SEBI for the period April 2001 to March 2003. During the inspection, certain irregularities were alleged as against MMF which were stated to have resulted in the violation of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as the Broker Regulations). Hence the findings of inspection were communicated to MMF vide letter dated December 17, 2003, in which MMF was also advised to submit their comments to the same. As the response of MMF made vide their letter dated January 12, 2004 was found to be unsatisfactory, I was appointed as the Adjudicating Officer, vide order of SEBI dated February 25, 2005 to inquire into and adjudge the alleged acts of omissions and commissions of MMF.

NOTICE/ REPLY/ PERSONAL HEARING:

3. Accordingly, I issued a notice dated January 11, 2006 to MMF under Rule 4 of the SEBI (Procedure for holding inquiry and imposing penalties by Adjudicating Officer) Rules, 1995 ('Rules') calling upon them to show cause as to why action should not be initiated against them for the violations referred to in the said notice. MMF was also advised to make their submissions, if any, along with supporting documents that they wished to rely upon, within 14 days from the date of the receipt of the notice, and also indicate whether they were desirous of a personal hearing.

4. A letter dated January 24, 2006 was then received from Vigil Juris, Advocates appointed by MMF, seeking a copy of the inspection report. As there was no accompanying letter of authorization, I issued a notice of hearing dated January 30, 2006 to MMF with an advice to appear for the hearing scheduled on February 24, 2006 and further advised MMF that a copy of the inspection report was already sent to them earlier vide letter dated December 17, 2003. A letter was then received from the Advocates along with the authorization letter in which they requested to be provided with the copy of the inspection report since their clients had misplaced the copy of the inspection report earlier provided to them. In view of the same, a copy of the inspection report was handed to the representative of MMF on February 6, 2006. Thereafter, since MMF requested for an adjournment of the proceedings, the matter was adjourned to March 8, 2006 and duly intimated to MMF vide letter dated February 27, 2006. On the date of hearing, representatives of MMF appeared before me and made their submissions. They also submitted additional written submissions dated March 1, 2006 during the course of the hearing. Subsequently, MMF forwarded copies of some other documents vide their letter dated March 22, 2006.

APPRECIATION OF EVIDENCE

5. I have considered the facts and circumstances of the case, the material available on record including the findings of the inspection report and have analyzed the contentions advanced on behalf of MMF along with the documents submitted in support thereof.
6. Upon an analysis of the same, findings on the charges leveled against MMF for which the present proceedings have been initiated, the submissions, if any, made by them in this regard in their defense, are elaborated herein below: -

(A) Failure to collect upfront margins from their clients.

7. The instances of the same as mentioned in the table below were found to have resulted in the violation of Regulations 26(xv) and 26(xvi) of the Broker regulations read with SEBI Circular Nos. SMDRP/Policy/Cir-07/2000 dated February 4, 2000 and SMD/POLICY/Cir/12/2002 dated May 17, 2002 :

Valan No.	Client name	Trade Amount	Trade Date	Date of collection
014	Hinduja Finance Limited	16,88,191	26.06.01	04.07.01
020	P R & Co.	12,98,860	10.08.01	14.08.01
021	PR & Co.	22,72,505	17.08.01	21.08.01
076	Vikas Jute P Ltd.	11,52,966	10.07.02	12.07.02

8. In their defense, MMF stated that in the case of Hinduja, they had collected the margin money that was deposited in their F&O account due to a lapse of their accounts department. As regards P R & Co. and Vikas Jute P Ltd., they stated that these clients were new and despite being informed about the collection of margin money, did not provide the same and that the matter was not pursued further as the entire transaction was completed and paid for by them within the prescribed time.
9. SEBI vide its Circular no. SMDRP/POLICY/Cir-07/2000 dated February 4, 2000, provides that where the margin in respect of a client in a settlement, works out to be more than Rs.1,00,000/- than the member brokers are mandatorily required to collect margins from their clients. Subsequently, vide SEBI Circular No. SMD/Policy/Cir-12/2002 dated May 17, 2002, it was mandated that for the collection of 10% upfront margin from the clients, only trades which would result in a margin of Rs.50,000/- or more should be considered. In other words, if the position of the client exceeded Rs.5 lakhs, the broker was required to necessarily collect 10% upfront margin from the clients.
10. Clearly, collection of margins is a risk containment measure in that in case of default by the client in making the payments on the settlement of the trades, the same is met with the security deposit, collected in the form of margins. Upfront margins are required to be collected, keeping in mind the exposure provided to the clients. The more the exposure, the more the margin collected, which acts as a safe deposit for the brokers, for settlement of trades.
11. In all of the cited cases, the position of the client exceeded Rs.5 lakhs which thus made it mandatory for them to necessarily collect 10% upfront margin from the clients. In all the cases pointed out

earlier, the date of collection of the respective amounts are after the trade date i.e. the date pertained to the payment made by the clients after the trade was executed. MMF have failed to offer any suitable explanation for the same.

12. A member is required to exercise more caution in the case of new clients and the same would apply to clients like P R & CO. and Vikas Jute Pvt. Ltd. being new clients. In such cases, MMF should have insisted more on the margin collection to prevent only default. MMF had submitted the financial statements for the year ended 2001-2002 for all the three clients at the time of hearing. I have noted that in the case of Hinduja, the same amount was credited in their F&O segment. I am also not satisfied with the explanation offered in the case of Hinduja in that the margin collected for the F&O segment cannot be clubbed with that of the equity segment and such an act cannot be simply attributed to a mistake of the accountant.
13. As for the others, I agree that the margin amounts were credited 3-4 days after the transaction dates as brought out in the table, cited in the notice so issued to the entity. The point is that the amount towards margin collection is meant to be collected upfront i.e. before the execution of the trades. Thus, there is an aberration as per the law existing at the relevant time.
14. However, I am also aware of the most recent circular issued by SEBI on margin collection dated February 23, 2005 which is as follows :

“Margins from clients:

Members should have a prudent risk management to protect themselves from client default. Margins are likely to be an

important element of such a system. The same shall be well documented and be made accessible to the clients and the stock exchanges. However, the quantum of these margins and the form and the mode of collection are left to the discretion of the members.”

15. Therefore, the existing circular grants the members the discretion as regards the margin to be collected from their respective clients and at the same time ensure that their interests too are suitably protected from any defaults later on.

16. Although SEBI has changed its perspective as regards the policy on collection of margin, this change has happened post the date of commission of the offense and hence reliance cannot be placed upon this circular. However, due to the same, I am not inclined to view this aberration too seriously.

(B) Delayed payments of monies to the clients i.e. payments were made beyond the stipulated 48 hours of the payout. The instances of the same were enclosed in Annexure I and II to the notice issued to MMF and amounted to a violation of Regulation 26(vi) of the Broker Regulations.

17. In their reply, MMF submitted that the clients mentioned in Annexure I and II traded through them frequently and had given standing instructions to maintain running account for them at the time of opening of the accounts and that most of the clients had submitted these instructions in writing; copies of which were enclosed as Annexure A to their reply dated March 01, 2006. It was submitted that some of the clients had issued oral instructions and that there was not a single complaint from any of the clients on this issue.

18. Annexure I and II were enclosed with the notice dated January 11, 2006 which list some of the clients to whom MMF were found to have delayed making the payments.
19. I have noted that in the list of the clients in Annexure I, 31 such clients had running accounts with MMF. As regards Annexure II comprising of 22 clients, they did not have running accounts with MMF. Later vide their reply dated March 1, 2006, MMF have enclosed 25 such letters from the clients who are stated to have given standing instructions to them regarding the maintenance of running accounts etc. The following is the list of 25 such clients and the dates of their instructions:

Name of the Client	Date of instruction
Alexander B Peter	07.10.03
Basant Agrotech Ltd.	07.10.03
Biju Panjikaran	14.10.03
C S Varrier	04.12.03
Charulata A Dhruv	07.10.03
K Muralikrishna	07.10.03
K M Joseph	14.10.03
Kanwaljith Singh	06.11.03
Manish Sawant	10.10.03
Mini K	07.10.03
Omprakash Pardaari	28.10.03
P Madhusudan	07.10.03
Raj Gandhi	07.10.03
Ravi S Modi (HUF)	04.12.03
Finlord Investment Pvt. Ltd.	07.10.03
Bajaj Securities	07.10.03
C Brahmaiah	28.10.03
Makhijani	23.10.03
C. Vijaya Krishna	28.10.03

Name of the Client	Date of instruction
Ramesh Bajaj	28.10.03
Pooja Sumaya	07.10.03
Sachin Sureka	07.10.03
Prashant M Pandit	07.10.03
Damodar Y Gothivarekar	07.10.03
SYP Investments	20.09.04

20. In the other cases, oral instructions were stated to have been taken for execution of the trades. I do not deny the fact that MMF have made efforts to obtain the instructions of the clients. However, these have been issued to them later. Moreover, retention of the amounts of clients, on the basis of their oral instructions, is certainly not a proper manner of functioning and would work out against the interests of the investors in that it would be difficult to identify these instructions and relate them to the client who had issued these instructions at the time of entering into a given transaction. Considering that the clientele of MMF was large enough i.e. 93 such active clients as per their own submission, several mistakes would have then crept in.
21. In terms of Regulation 26(vi) of the Broker Regulations “Failure to deliver any security or make payment of the amount due to the investor within 48 hours of the settlement of trade unless the client has agreed upon in writing”; renders a broker liable for monetary penalty.
22. As brought out earlier, although in some of the cases, the clients are stated to have given standing written instructions to MMF to maintain running accounts, these were obtained much after the transactions took place. The same is apparent when one compares the date of offering standing instructions and trade date/ due date for payment in Annexure E to the inspection report. Hence, the

standing instructions obtained post transactions appear to be irrelevant in so far as determination of the violation is concerned.

(C) Delay in the delivery of the securities to the clients. The instances of the same were enclosed in Annexure III to the notice and amounts to a violation of Regulation 26(vi) of the Broker Regulations (read with SEBI Circular No. SMD/SED/CIR/93/23321 dated 18.11.1993.

23. In their defense, MMF submitted that some of the clients had given written instructions while some despite being informed, did not submit any such instruction but had only provided them with oral instructions and that in any case, there was not a single complaint from any of these clients on this issue. Copies of the letters from some of clients were received as Annexure B.
24. In terms of SEBI Circular No.SMD/SED/CIR/93/23321 dated November 18, 1993, all members are mandated to keep the money of their clients and their own money in separate accounts and members are further directed to hold or receive money on account of a client and to forthwith pay such money to the current or deposit account at the bank to be kept in the name of the member, in the title of which the word "clients" appears. All members are further permitted to keep one consolidated clients account for all clients or accounts in the name of each client, as they think fit.
25. I am also cognizant of another SEBI Circular SMDRP/Policy/Cir-05/2006 dated February 1, 2001, in terms of which, the members were required to deliver the securities within 6 calendar days after the pay out day to the beneficiary accounts of the clients. From April 1, 2001, the time of delivery was to be reduced from 6 days to 4 calendar days or 2 working days whichever is later. Further, it was also made clear that the securities lying beyond the prescribed

time would also not be available for delivery in the subsequent settlement and for pledging or stock lending purposes.

26. I have noted that in 35 instances, the securities were retained at MMF's end for a period ranging from 1-78 days.
27. I have noted that in 10 instances, such standing instructions have been provided by MMF which are given below :-

Client	Date of instruction	Date of transaction
G. Raja Sekhar	07.10.03	27.11.02
Juhi Polymers	07.10.03	22.10.01
Mahendra Shrigaonkar	16.09.03	22.10.01
Nasdaq Financial Consultants	23.10.03	09.01.02, 27.11.02
Nilima Murarka	04.12.03	09.01.02
Padhye Investments	04.12.03	17.08.01, 09.01.02
Pusottamlal Bairagra	23.10.03	17.07.02
Sanjeev Kumar Bajaj	23.10.03	06.03.03
Satish Dhawan	29.10.01	09.01.02
UDS Investment Consultancy	01.10.03	02.07.01, 16.05.02

28. Once again, it is clearly apparent that in all the above cases, the standing instructions were obtained much after the execution of the transaction. I have elaborated on the issue of oral instructions and post dated instructions in the previous charge and the same is relevant also for the present charge. Hence, I am inclined to treat all such letters as null and void and hence, the violation stands established.

(D) Non segregation of the clients' funds from MMF's funds : Expenses, income, Trade Payments/ receipts, and other transactions in the nature of own account were found to have been paid/ received from / to clients' accounts. These instances were enclosed in Annexures IV and V of the notice to show cause. The details of the client money routed through their own account is as follows:

Financial Year 2001-02

Account code	Account name	Receipt (RS.)	Payments (Rs.)
5	Punjab and Sind Bank	27,051	-
2081	Pawan Rupani	-	3,833
2190	Hudli	1,77,000	-
2224	Rockville Securities Pvt. Ltd.	-	36,000
	Total	2,04,051	39,833

Financial Year 2002-03

Account code	Account name	Receipt (RS.)	Payments (Rs.)
5070	Pawan Rupani	16,15,450	-

29. MMF were also found to have transferred the funds by cheque from BSE client account to NSE client account and vice versa without obtaining the consent letters from them. An amount of Rs.102 lakhs was received by MMF from Advance Exports. This balance was then transferred from the books of BSE to the books of NSE. In the following instances, MMF were found to have adjusted the balance of one client with another client, without obtaining the consent letters from them:

Date	Amount	Client name	Client name
12.04.01	61,625	Aparna Vadodkar	Anuradha Vadodkar
25.05.01	1,06,00,000	Adani Agro Ltd.	R R Bohra
25.05.01	50,00,000	AdaniAgro Ltd.	Ramraj Securities
12.11.01	1,00,000	Saniya Enterprise	Navin Vinod Shah
03.12.01	20,00,000	Vipul Desai	Shailesh Investments

30. These actions on the part of MMF amounted to a violation of Regulation 26(xiii) of the Broker Regulations read with SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993.
31. In their defense, MMF submitted that the credits and debits to the wrong account was on account of inadequate experience of the person who was new to the organization and not familiar with the accounting of the brokerage firm. They stated that the said issue was streamlined from April 1, 2003 and that the transfer of funds from BSE to NSE was for the same client and was due to the oral instructions of the client while the adjustments of the amounts of one client against the liability of another client were done on the orders and authorization of the said clients. Copies of the letters from the clients; Aparna Vadodkar, Anuradha Vadodkar and Navin Monicha were forwarded. It was also stated that the position of misutilisation of funds was made clear in their letter dated January 12, 2004 from the consolidated position of the clients' accounts that traded on the BSE, NSE and NSE derivative segment.
32. I have perused the documents related to this charge and have noticed that in their reply dated January 12, 2004, MMF had confirmed that the non segregation was due to an error on the part of their accountant and that the same had been rectified and that

all the non client related payments/ receipts were being routed through their own accounts while all client related payments/ receipts were routed through the client accounts. Further, MMF had stated that the misutilisation of the clients' funds were on the basis of the books of accounts relating to the BSE transactions only and not on the overall company accounts and that the consolidated position of the clients funds account would have shown that there was no misutilisation.

33. In all these contentions, there was not even a hint of their obtaining the consent letters from the clients, as pointed out in the table for adjustment of balances. It is only in their reply dated March 1, 2006, that MMF have raised this ground and forwarded some consent letters, typically all of them in the same format that are stated to have been obtained from different clients i.e. Aparna Vadodkar and Anuradha Vadodkar, Saniya Enterprises and Navin Minocha. The client registration form of Vipul Desai was also forwarded vide letter dated March 22, 2006.

34. As far as the letters dated April 12, 2001, November 11 and 12, 2001 received from Aparna Vadodkar and Anuradha Vadodkar, Saniya Enterprises and Navin Minocha are concerned, the same are acceptable. However, in case of the others, there has been no proof of such adjustment and no reason has been cited for adjustment of the balances. The adjustment of balances in the other three accounted for adjustments to the tune of 1,76,00,000/- No trade details, no other information as to why such transfer of balances took place in very first place is available. As for Adani Agro Ltd., it is noted that there were no transaction for this client after June 2001. Payments were found to have been paid to the client despite amount receivable from the client. MMF were also found to have made payment to Adani only on receipt of payment from Vipul Desai and the balances outstanding at the end of the

year in the account of these clients were similar. MMF have failed to offer any explanation on these issues too. The same applies to the case of Pawan Rupani also, where MMF have failed to offer any explanation.

35. MMF have failed to offer a suitable explanation for the instances enclosed as Annexure IV to the notice. I understand some entries may not have been included in the calculation of the total funds so misutilised. But how about routing different expenses as related to the advertisement, office maintenance and many others etc from the clients' accounts?
36. The provisions of Regulation 26(xiii) of the Broker Regulations, inter- alia provides for imposition of monetary penalty for failure on the part of a broker/sub-broker to segregate his own funds or securities from the clients' funds or securities or using the securities or funds of the client for his own purpose or for purposes of any other client.
37. This arises from a mandate issued to all members to keep the money of their clients and their own money in separate accounts. The monies that can be paid into the clients accounts include monies held or received from the clients, such as money belonging to the member as may be necessary for the purpose of opening or maintaining their account, a cheque or draft received by the member representing in part, the money belonging to the client and in part money due to the member etc. However no money is to be withdrawn from the clients account other than the money required for payment to or on behalf of the client, money belonging to the member as may have been paid into the client account in respect of the previously mentioned payments into the account etc. In terms of SEBI Circular No.SMD/SED/CIR/93/23321 dated November 18, 1993, all members are mandated to keep the money of their clients

and their own money in separate accounts and members are further directed to hold or receive money on account of a client and to forthwith pay such money to the current or deposit account at the bank to be kept in the name of the member, in the title of which the word "clients" appears. All members are further permitted to keep one consolidated clients account for all clients or accounts in the name of each client, as they think fit.

38. Thus any broker who fails to maintain the segregation of accounts and utilizes the clients funds in a improper manner for their own benefit needs to be suitably penalized.

39. MMF have admitted to the lapse mentioned above, which however is stated to have been rectified by them. However, no documentary evidence was submitted to substantiate their contention. By thus failing to maintain any segregation between their own and client funds, MMF has violated the provisions of Regulation 26(xiii) of the Broker Regulations.

(E) Failure to frame the code of internal procedures and conduct for the prevention of insider trading which amounts to a violation of Regulations 26(xv) and 26(xvi) of the Broker Regulations.

40. During the course of the present proceedings, MMF had submitted in their reply dated March 01, 2006 that they had framed the code of internal procedures and conduct for the prevention of insider trading, the details of which were enclosed in Annexure C to the said letter. However, the date of framing such a Code of Conduct was not highlighted. Yet in their earlier reply dated January 12, 2004, MMF did not indicate that they had framed any such code of conduct. It would appear that this Code was obviously not in place earlier, at the time of inspection.

41. The Code of internal procedures is very important in that it lays down the rules that are required to be adhered to in a normal working environment during the day to day functioning of an intermediary. It is meant to ensure the proper and prudent business practices and the conduct to be followed considering that an intermediary has access to unpublished price sensitive information as they deal in and out with various clients, both corporate and retail, in various scrips. In order to ensure that there is no misuse of this information to which they have access, for their own benefit, all employees associated with an intermediary are required to necessarily comply with the internal guidelines and procedures laid down by the intermediary to prevent misuse of any systems.

42. Considering that this code was earlier not in place, but appears to have been put in place by MMF later. I am inclined to take a lenient view on this count also considering that MMF have also produced a letter issued to the BSE dated June 26, 2002 in which they have confirmed the appointment of Kiran Juthani as their compliance officer.

(F) Failure to pass on the dividend to clients. This act amounted to a violation of Regulations 26(xvi) and 26(xx) of the Broker Regulations.

43. Summary of the dividend account for the years 2001-02 and 2002-03 is as follows:

Particulars	2001-02	2002-03
Total received	5,13,432	6,01,718
Total paid to clients	32,196	18,563
Net transferred to Income	4,81,236	5,83,155

44. In their reply dated March 01, 2006, MMF submitted that out of the amount shown under this head, 80% of the amount pertained to the dividend income arising out of their own investment in the shares of the United Western Bank, which had been rightly credited into their income account. MMF further submitted that the balance amount was retained as per the instructions of the clients and enclosed sample copies of these instruction letters to substantiate their contention.
45. I have examined the replies and the documents forwarded on this count by MMF and have noted that there is a discrepancy in the contentions made in their reply dated January 12, 2004 and the replies dated March 1, 2006 and March 22, 2006. In the first reply, MMF have not raised any issue of the dividends received by them on account of their investments in United Western Bank. In the second reply dated March 1, 2006, they have contended that 80% of the dividend was on account of their own investments in United Western Bank and that the rest was not credited into the account of the clients due to the instructions received from these clients. Later vide their letter dated March 22, 2006, the counsel appearing for MMF submitted that they were forwarding the certified copies of the letters received from United Western Bank ('UWB') forwarding the amount of dividend due to their clients pertaining to their investments in the shares of the said Bank by a demand draft. In this context, they forwarded the letters dated August 23, 2001 and December 28, 2002 (4 in no.) stated to have been received from the UWB, which are shown as computer generated and hence unsigned, which inter alia state that demand drafts of Rs.38508/-, Rs.402750/-, Rs.37,400/- and Rs.297250/- was due to their clients. The counsel of MMF also stated that their clients had inadvertently stated that they were in possession of the dividend

warrants but that since the amount was paid by the bank by way of dividend, there could not be any counterfoil.

46. I am not satisfied with this argument, for the following reasons : MMF had in their letter dated January 12, 2004 confirmed to SEBI that they did not have any proprietary trades. In fact, as brought out in the findings of the inspection report also (page 29 of 31), MMF informed the inspection officials that no proprietary trading was done by them and their own trade transactions pertained either to error trades or trades done in connection with bad delivery of the prior period. The inspection finding also stated that the member did not maintain stock records of their own trading. Further, these letters were earlier never mentioned nor produced. Clearly, had the letter been in their possession, MMF would have produced the same prior to the initiation of the proceedings or in their very first reply dated January 12, 2004 or later vide their letter dated March 1, 2006. Furthermore, although MMF have described these letters as “certified copies of the letters received from the bank”, the same have not been certified by the bank per se. Instead the letters have been certified to be a true copy by MMF themselves. I would also like to mention here that contrary to the contention made by the counsel of MMF in their letter dated March 26, 2006, at no point of time did MMF state that they are in possession of the counterfoils of the dividend warrants. This issue infact was never submitted by them even during the course of the proceedings even when they were further asked to explain their stance on this charge. Instead, it was only reiterated that the amounts pertaining to the dividend income arising out of their own investment in the shares of UWB was rightly credited to their income account. Therefore, I fail to comprehend the purpose of MMF laying claim to making a submission, that was in the first place, never made.

47. More relevant to note is that MMF have failed to produce any documentary evidence to substantiate the fact that they actually held these shares of UWB in their account. Further, the copy of demand drafts was also not enclosed with these letters. The onus to produce additional documents to substantiate their contentions would lie upon MMF which they have failed to do. In the absence of such valid documents, I am not inclined to rely upon these documents and accept the reply of MMF on this count.
48. As regards their contentions that the dividends of some of the clients were retained by them due to the instructions of the clients, I have noted that these instructions as forwarded in the form of Annexure A and B once again were obtained after the act took place. Hence the same are not being taken into account. The violation is therefore established.

(G) Dealings with the following unregistered sub brokers :

Terminal No.	Name of the client
6 and 9	Limra FInstock Pvt. Ltd.
38 and 44	Limra FInstock Pvt. Ltd.
3	Parasmani Finstock Pvt. Ltd.

49. The same amounted to a violation of Regulation 26(xiv) of the Broker Regulations read with SEBI Circulars No. SUBBROK/CIR/02/2001 dated January 15, 2001 and SMDRP/Policy/Cir-49/2001 dated October 22, 2001.
50. MMF submitted that since both of the above mentioned entities were registered with the regional stock exchanges i.e. at Hyderabad and Ahmedabad, they had been under the impression

that there was no need to register them once again but that in any case, their VSATs had already been surrendered much before the SEBI's report.

51. Once again I have noted that in their reply dated January 12, 2004, no comments had been offered by MMF on this count. However, in their reply dated March 1, 2006, it was made clear that they had assumed that as these entities were registered with the regional stock exchanges at Hyderabad and Ahmedabad, they would not have been required to be registered with BSE as well. This contention advanced by MMF besides being unacceptable is also incredible considering that MMF had 18 sub brokers duly registered with them at the relevant time. Any broker who had such a huge numbers of sub brokers that too registered entiies cannot plead ignorance of the requirement for separate registration for a member of other stock exchange as a sub broker while trading for ultimate clients.
52. During the course of the hearing, MMF furnished some applications for cancellation of VSAT under BOLTNET STAGE IV which bear the seal of the Information Systems Department of BSE. I have considered these submissions of MMF also while arriving at a finding.
53. Undoubtedly, MMF had trading terminals at the offices of the entities mentioned in the table, which is violative of Regulation 26(xiv) of the Broker Regulations. Further, the circulars discussed earlier clearly state that brokers cannot have terminals at offices other than the registered office, branch offices and their registered sub brokers' office. The violation of MMF is thus established, notwithstanding their contention that they have discontinued their trading with these entities.

(H) Failure to comply with the directions issued by the Board and the consequent failure to exercise due diligence, skill and care amounting to the violation of Regulations 26(xv) and 26(xvi) of the Broker Regulations.

54. MMF stated that they have not been issued any specific directions from the Board, which were disregarded by them.

55. However, I have noted that MMF have been charged on this count on the basis of a cumulative analysis of all the violations committed by them in as much as they have, as a registered entity, failed to comply with the various rules, regulations, directions/circulars/guidelines issued by SEBI as regards brokers from time to time. Hence, MMF having violated the discussed provisions of the Act/Rule/Regulations would come under its scrutiny.

56. From the elaborate discussion above, it is apparent that there have been instances galore of lack of exercise of necessary care and diligence on the part of MMF, in view of some of the charges levied upon MMF being established and hence an appropriate penalty as prescribed, needs to be levied upon them. In this regard, the relevant penal provisions of the Act that would be attracted for all these discussed violations is reproduced below, which read as under:

Section 15F(b): Penalty for default in case of stock brokers:

If any person who is registered as a stock broker under this Act;

a)

b) fails to deliver any security or fails to make payment of the amount due to the investor in the manner within the period specified in the regulations, 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.

c)

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

57. As mentioned earlier, since most of the charges framed against MMF are established, they would be liable for a penalty as provided under the provisions of law quoted above. However before fixing the quantum of penalty that is commensurate with all the charges leveled and established against MMF, it would be necessary to also refer to certain factors as enumerated under Section 15J of the Act, that need to be taken into account while adjudging the quantum of penalty. These factors include the amount of disproportionate gain or unfair advantage made as a result of the said default, the amount of loss caused to the investors and the repetitive nature of default. The adjudicating officer is thus required to have due regard to the factors stated in the section. The same is a direction and not an option, which is however to be exercised with due regard to his/her discretion, to be exercised judiciously, depending upon the facts and circumstances of each case as well as after analysing all the relevant material available on record especially in the case of failure to perform statutory obligations.
58. MMF have impressed upon me the fact that all the alleged violations are more of a technical nature, caused by the inadvertent mistakes of the accounts staff and are not violations of any substantial nature resulting in any unfair advantage or

disproportionate gain to them or resulting in any loss to any investor or group of investors. MMF have stated that these mistakes have been corrected at the earliest possible time.

59. I am not in agreement with the contentions advanced by MMF. To dismiss their aberrations as mere technical violations would amount to dismissing as a nullity, all the provisions of the relevant regulations, which are issued keeping in mind the interests of the common man/investors. Any evasion of these regulatory provisions issued by the regulator in the interests of the investors or non adherence to the same for any reason whatsoever is bound to affect the interest of such investors. Although such a loss can never be specifically computed in monetary terms, the fact remains that all regulatory provisions have a specific purpose behind their enactment. The very purpose of enacting any legislation is due adherence to the procedures laid down there under to ensure the sound and smooth functioning of the capital market. If adequate cognizance is not taken of the breach of any of these provisions and sufficient liability is not fixed there upon, the entire purpose of incorporating the provisions in the said enactments would become redundant. Moreover there is no evidence on record to substantiate the plea of MMF that these violations are not repetitive. They have only contended that necessary steps were taken by them to rectify the defects noted in their dealings with the clients. However as brought out earlier no documentary proof to that effect was submitted before me.

PENALTY

60. In view of the above, on a judicious exercise of the powers conferred upon me and on analyzing the material available on record, in exercise of the powers conferred upon me in terms of Rule 5 of SEBI (Procedure for holding inquiry and Imposing

penalties by the Adjudicating Officer) Rules, 1995, I consider it appropriate to impose a penalty of Rs. 2,00,000/- (Rupees Two Lakhs only) on M/s. Maliram Makharia Finstock Private Limited whose Pan No. is AACCM1102E.

61. The penalty amount shall be paid within a period of 45 days from the date of receipt of this order through a cross demand draft drawn in favour of "SEBI- Penalties remittable to the Government of India and payable at Mumbai which may be sent to Shri P. K. Kuriachen, Chief General Manager, Securities and Exchange Board of India, Plot No.C4-A, G Block First Floor, B Wing, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

PLACE: MUMBAI

G. BABITA RAYUDU

DATE: SEPTEMBER 05, 2007

ADJUDICATING OFFICER