

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI  
CORAM: S. RAMAN, WHOLE TIME MEMBER**

**ORDER**

**Under Section 12 (3) of SEBI Act, 1992 read with Regulation 28 (2) of SEBI (Intermediaries) Regulations, 2008 in the matter of M/s Century Finvest Private Limited (PAN: AAACC3253A and SEBI Registration No. INB 230930432).**

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1. M/s Century Finvest Private Limited (hereinafter referred to as the "**Noticee**") is registered with Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") as a stock broker (SEBI Registration No. INB230930432) and is a member of National Stock Exchange Ltd. (**NSE**). SEBI received a complaint against the Noticee in respect of its dealings as a member of NSE. In view of this, a joint inspection was conducted by SEBI and NSE into the dealings of the Noticee as a stock broker during the period January and February 2005.
2. As a part of the joint inspection (conducted by SEBI and NSE), the books of accounts, other records and documents pertaining to broking operations at the offices of the Noticee located at Aligarh and its registered office located at Delhi were examined during the periods January 17 to January 18, 2005 and January 31 to February 04, 2005 respectively.
  - 2.1 During the inspection, the following irregularities were observed in the functioning of the Noticee as a stock broker, in its offices at Aligarh, U.P. located Near Ahuja Eye Center, Laxmi Bai Marg, Marris Road (hereinafter referred to as "**Marris Road Office**") and Chandra Market, Near PNB, Raliway Road (hereinafter referred to as "**Chandra Market Office**"):-
    - Allotment of trading terminal to unauthorized person/entity; viz. M/s Bhadra Gupta Securities Pvt. Ltd.(hereinafter referred to as "**BGSPL**") and operating of the terminal by unauthorized persons,

- The visiting card and letterhead of the Director of BGSPL, Mr. Puneet Agarwal with his credentials mentioned as "*Share Broker and Financial Consultants and Dealer - National Stock Exchange of India Ltd., Delhi Stock Exchange*" was obtained from the office of the Noticee,
- Aiding and abetting BGSPL for doing clientele business without registering itself as a sub-broker,
- Price of securities mentioned in the manual register maintained at the Marris Road Office of the Noticee, did not match with the trade data of the stock exchange,
- Carrying out illegal trading outside the stock exchange mechanism,
- Settlement of transactions in cash.

2.2 The following irregularities were observed during the inspection conducted at the registered office of the Noticee located at 75, Vijay Block, 2nd Floor, Vikas Marg, New Delhi- 110092:

- Transaction with clients without entering into member-client agreement,
- Non-maintenance of proper segregation between Noticee's funds and clients' funds,
- Delay in remitting dividends to clients,
- Settlement of transactions with clients in cash,
- Non collection/Short collection of daily margin/upfront margin from clients,
- Non-submission of information of Computer to Computer Link (**CTCL**) terminals to the Exchange,
- Granting trading terminals at places other than its registered office/registered sub-brokers office/branch office,
- Allotment of trading terminals to its clients thereby aiding and abetting the clients to act as unregistered sub-brokers,
- Transfer of trades from proprietary account (**pro-account**) of the Noticee to client account and vice versa and also from one client's account to another in F&O Segment,
- Short collection/wrong reporting of margin to exchange.

3. Based on the aforesaid irregularities and lapses, it was alleged that the Noticee violated the provisions of the SEBI Act, 1992 (hereinafter referred to as "**SEBI Act**"), the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as the "**Broker Regulations**"), various SEBI Circulars and Securities Contract Regulations, Act, 1956 (**SCRA**) and Securities Contract Regulations, Rules, 1957 (**SCRR**). The inspection report was submitted on June 20, 2005.

- 3.1 The findings of the inspection report was forwarded to the Noticee, vide letter dated July 05, 2005. Since no reply was received from the Noticee, a reminder, vide letter dated September 13, 2005 was sent to the Noticee, granting 10 days time to furnish its reply/comments. The Noticee submitted its reply to the inspection report vide letter dated November 14, 2005.
4. Subsequent to this, an enquiry proceeding under the SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as “**Enquiry Regulations**”) was initiated against the Noticee to enquire into the violations of SEBI Act/Rules/Regulations/Circulars and provisions of SCRA and SCRR. Pursuant to this, a Show Cause Notice (**SCN**) dated June 19, 2006 was issued to the Noticee to show cause as to why action under Regulation 13 (1) of the Enquiry Regulations should not be taken against the Noticee.
- 4.1 While these proceedings were pending, the Enquiry Regulations were repealed on May 26, 2008, by the SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as "the **Intermediaries Regulations**"). Accordingly, the Enquiry Officer/Designated Authority (hereinafter referred to as the "**DA**") continued with the proceedings in terms of Regulation 27 read with 38(2) of the Intermediaries Regulations and Regulation 13(1) of the Enquiry Regulations.
- 4.2 On completion of proceedings, the DA submitted the report on October 21, 2011, recommending that “*the certificate of registration of the Noticee be suspended for a period of five years*” for violation of the provisions of the SEBI Act, SCRA, SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (**PFUTP Regulations, 2003**), Broker Regulations and various SEBI Circulars.
5. Pursuant to this, a post enquiry SCN dated November 22, 2011 was issued to the Noticee, under Regulation 28 (1) of SEBI (Intermediaries) Regulations, 2008, to show cause as to why action, as recommended by the DA or any other action as considered appropriate by the Designated Member, should not be taken against the Noticee. A copy of the DA's report dated October 21, 2011 was also forwarded to the Noticee along with an advice to file reply, if any, within 21 days from the date of receipt of the notice. The Noticee, vide letters dated January 31, 2012 and February 02, 2012, submitted its reply.

6. The Noticee was given an opportunity of personal hearing on June 12, 2014, which was rescheduled on request by the Noticee to July 02, 2014. On July 02, 2014, Noticee, represented by their Advocate, Mr. Joby Mathew and Chartered Accountant, Mr. Balveer Singh Choudhary appeared for the hearing and made submissions on behalf of the Noticee. Subsequent to this, Noticee, vide letter dated July 10, 2014 requested a week's time to file additional submissions. Noticee, vide letter dated July 16, 2014 filed its written submissions, which was received by SEBI on July 28, 2014.

6.1 As the Noticee did not submit complete documents/annexures as mentioned in its earlier replies (vide letters January 31, 2012 and February 02, 2012), the Noticee was granted an additional opportunity of hearing on February 27, 2015 and was also advised vide letter dated February 11, 2015 to provide the aforesaid documents during the scheduled hearing.

6.2 Noticee, vide letter dated February 23, 2015 requested for adjournment of the hearing for a period of one month. Accordingly, the hearing was adjourned to April 22, 2015. On the scheduled date, Mr. Joby Mathew, Advocate appeared on behalf of the Noticee. It was submitted on behalf of the Noticee that they had severed all relations with BGSPL subsequent to the inspection conducted by SEBI. The Noticee was also required to furnish the following documents/clarification:

- Documents as required, vide SEBI's letter dated February 11, 2015.
- To furnish for sighting, the originals of member-client agreement of the clients viz. Ms. Rani Trivedi, Mr. R.K. Gupta, Mr. Dinesh Kumar Saraswat and Mr. Ajay Kumar Upadhyay.
- Noticee was required to offer clarification in respect of the fees paid by them on behalf of BGSPL (for the sub-brokership of BGSPL).

6.3 Noticee was given time till April 27, 2015 to submit the aforesaid documents/clarifications. Noticee, vide letter dated April 27, 2015 sought extension of time till May 6, 2015 to submit the aforesaid documents/clarification. Subsequent to this, Noticee vide letter dated May 5, 2015 submitted its reply/documents. Thereafter, SEBI, vide several e-mails dated May 11, 2015, May 18, 2015 and May 25, 2015 sought further clarifications in respect of the documents and submissions made by the Noticee (vide the aforesaid letter dated May 5, 2015). Thereafter, Noticee, vide letter dated June 1, 2015 submitted its reply/clarifications.

7. I have considered the Report submitted by DA, the Post-Enquiry SCN issued to the Noticee, oral and written submissions of the Noticee along with the documents contained therein and other material available on record.

7.1 It is observed from the enquiry report that the basis of allegations against the Noticee mainly emanate from the findings of the joint inspection conducted by SEBI and NSE at the branch offices of the Noticee in Aligarh and the registered office in Delhi.

**I. Irregularities and Violations observed during the inspection at the Branch Offices of the Noticee at Aligarh:**

**A. Allowing trading terminal to be used/operated by unauthorized person/entity (BGSPL) and aiding and abetting BGSPL in its unregistered sub broker activities**

- i) It was alleged that Mr. Puneet Agarwal, (a director of BGSPL) had described himself in his visiting card as “*Share Broker & Financial Consultants*” and that BGSPL's letterhead claimed that they were “*Share Broker and Financial Consultants*” and “*Dealer - National Stock Exchange of India Ltd., Delhi Stock Exchange*”. In view of this, DA observed that the said activities created a false and misleading appearance of BGSPL being eligible of trading in securities, in violation of Regulation 4 (1) and 4(2)(a) of the PFUTP Regulations, 2003.
- ii) *Pay-in slips* in respect of some cash deposits made by some clients, in the Bank A/c No.6933 of Punjab National Bank, were recovered by the inspection team from the *Chandra Market Road* office of the Noticee. It was thus alleged that the Noticee had settled transactions with their clients in cash thereby violating SEBI Circular No. *SEBI/MRD/SE/Cir-33/2003/2708* dated August 27, 2003 which stipulates that the broker cannot accept cash from clients.
- iii) It was also alleged that BGSPL carried out transactions in cash segment of NSE through the terminals of the Noticee using as many as 192 codes during the period from April 2004 to November 2004. As BGSPL was not a registered sub-broker, it was alleged to have violated Section 12 of SEBI Act, 1992 and Rule 3 of SEBI (Stock Brokers and Sub-Brokers) Rules, 1992, which prohibits a sub-broker to deal in securities without obtaining registration from SEBI. It was further observed that

the Noticee had issued the contract notes in the name of BGSPL though multiple client codes have been used for entering the trades. It was hence alleged that the Noticee aided and abetted BGSPL.

- iv) It was alleged that the terminal assigned to the Noticee by NSE at Marris Road Office, for both the Cash and F&O segments was being operated by Mr. Sunil Sagar and Ms. Neha Goyal, who were the employees of BGSPL. BGSPL was neither an authorized entity nor a registered sub-broker at the relevant time. It was hence alleged that Noticee violated SEBI Circular No. SMDRP /Policy/ Cir-49/2001 dated 22/10/2001 and NSE Circular No. 163 Ref. No. NSE/MEM/1591 dated April 20, 2000 which provides: *"No trading terminals shall be located at places other than the stock brokers' registered office and/ or its branch office or at the place of registered sub-broker's office"*.

### **Findings**

- v) In respect of the allegations at item No. (i), (ii) & (iii):

A. Following are the submissions by the Noticee:

- a. The main submission of the Noticee in respect of the aforesaid allegations was that the findings of the DA were mostly based on the alleged misdemeanors and irregularities on the part of BGSPL and its director, Mr. Puneet Agarwal.
- b. Noticee is not connected to BGSPL and has no control over what Mr. Puneet Agrawal and BGSPL chose to include in their business cards/letterheads. Noticee cannot be held responsible for actions of Mr. Puneet Agrawal and BGSPL. BGSPL was only a registered client of the Noticee during the relevant time.
- c. It was also stated that the aforesaid bank account (Bank A/c No.6933 in Punjab National Bank) does not belong to the Noticee and the same belongs to BGSPL.
- d. Noticee also stated that after the findings of the inspection, Noticee stopped dealing with BGSPL. Noticee also informed that the application for registration of BGSPL as a sub-broker with the NSE, submitted through the Noticee, was withdrawn by them vide their letter dated May 13, 2005 *i.e* about 4 months after the inspection and prior to the receipt of the inspection report. It was also submitted that BGSPL obtained registration as sub-broker from SEBI on December 15, 2005.
- e. The contract notes were issued by the Noticee (to BGSPL) at the request of BGSPL.

B. Following are my observations/findings in respect of the aforesaid submissions of the Noticee:

- a. BGSPL was neither a registered sub-broker nor an authorized entity during the relevant time. Even though the Noticee claims that they are not connected with BGSPL and BGSPL was only a registered client, it is seen that the name of Mr. Puneet Agarwal, the director of BGSPL, was mentioned as "*Branch Manager*" in the Noticee's letter dated September 10, 2003 sent to NSE for "*new installation case of VSAT*" at Noticee's office at Chandra Market Road.
- b. Noticee in their reply submitted that the premises at Chandra Market were owned by Mr. Puneet Agarwal, hence his name was given for installation of the VSAT equipment. I am of the view that mentioning the name of a person as a branch manager in the records, by a broker on account of he being the owner of the premises, which was rented out to the broker, cannot be accepted as a plausible defence and the same is rejected.
- c. In view of this, the Noticee, as a principal cannot distance from the acts/omissions of BGSPL and Mr. Puneet Agarwal and is hence liable for all the actions and omissions committed by Mr. Puneet Agarwal and BGSPL. There is no dispute with regards to the facts that the bank accounts mentioned in the *Pay-in slips* were of BGSPL and Mr. Puneet Agarwal had described himself as "*Share Broker and Financial Consultants*" and "*Dealer - National Stock Exchange of India Ltd., Delhi Stock Exchange*" in his visiting cards, letterheads etc.. One cannot also ignore the fact that the aforesaid *Pay-in slips* and documents containing fraudulent misrepresentation, such as visiting cards, letterheads etc. were recovered by the inspection team from the office of the Noticee at Chandra Market Road and Marris Road office. Even though the Noticee claims that BGSPL was only their registered client, Noticee did not dispute the fact that they themselves had mentioned Mr. Puneet Agrawal's name as their Branch Manager. In the facts and circumstances as mentioned above, the Noticee, as a principal cannot plead ignorance of, what Mr. Puneet Agarwal chose to include in their business cards/letterheads and the fact that BGSPL is settling the transactions with clients in cash. Noticee is liable for all the actions and omissions committed by BGSPL and its director, Mr. Puneet Agarwal.

- d. SEBI Circular No. *SEBI/MRD/SE/Cir-33/2003/2708* dated August 27, 2003 stipulates that the broker cannot accept cash from clients. In the instant case, the pay-in slips, recovered from the office of the Noticee indicates settlement of transactions in cash with the clients in violation of the aforesaid SEBI circular. As has been mentioned earlier, the fact that the bank account mentioned in the aforesaid pay-in slips was the bank account of BGSPL does not absolve the Noticee from the charge as the Noticee is liable of all the acts by BGSPL or its director, Mr. Puneet Agarwal, whose name is mentioned as the branch manager of the Noticee. In view of this, Noticee, as a principal is liable for the acts/omissions of their agents and hence violated the provisions of aforesaid SEBI Circular No. *SEBI/MRD/SE/Cir-33/2003/2708* dated August 27, 2003.
- e. Regulation 4(2) of the PFUTP Regulations, 2003 stipulates that dealing in securities shall be deemed to be fraudulent or unfair trade practice, if it involves fraud and the said regulation further provides for various activities deemed to be fraudulent. The definition of fraud as defined in Regulation 2(1)(c) of the PFUTP Regulations includes any act, expression, omission or concealment committed by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities. In the instant case, Mr. Puneet Agarwal (director of BGSPL), who is neither an authorized nor a registered entity has fraudulently described himself in his visiting cards, letterheads etc. as "*Share Broker and Financial Consultants*" and "*Dealer - National Stock Exchange of India Ltd., Delhi Stock Exchange*" and misrepresented himself as a registered intermediary. It is further seen that the Noticee, s SEBI registered intermediary, mentioned the name of Mr. Puneet Agarwal as their branch manager in the letter dated September 10, 2003 sent to NSE. This clearly indicates that the act of fraudulent representation by Mr. Puneet Agrawal is done with the full knowledge and connivance of the Noticee. I am therefore of the view that the Noticee is equally liable for the acts of fraudulent misrepresentation by Mr. Puneet Agarwal and hence found to have violated Regulation 4(1) and 4(2) of the PFUTP Regulations, 2003.
- f. Further, the contention of the Noticee that the contract notes carrying multiple client codes were issued to BGSPL at the request made by them (BGSPL), is preposterous and hence cannot be accepted for the simple reason that the Noticee, a SEBI registered intermediary, who is well aware of the implications of issuance of contract notes carrying multiple client codes to a single



client, cannot take recourse to a defence that the same was issued at the request made by the client himself. I have no hesitation to hold that Noticee, by issuing contract notes carrying multiple clients codes to BGSPL, facilitated, aided and abetted their client, *viz.* BGSPL to act as an unregistered sub-broker.

- g. During the hearing held on April 22, 2015, the Noticee was specifically asked whether the registration fee for BGSPL (as sub-broker) has been paid by the Noticee even after the inspection. Noticee, in reply stated "*we have not dealt with BGSPL thereafter and it has been an inactive sub-broker for the last many years. We have been paying the fees on behalf of sub brokers in compliance of various circulars/instructions etc. issued by NSE although we are not earning any brokerage from BGSPL.*". Noticee also submitted the certificate issued by their statutory auditor which states that the Noticee has not carried out any transaction on behalf of BGSPL and/or its director, Mr. Puneet Aggarwal from April 1, 2005 to March 31, 2015 and that no brokerage has been paid/received to/from BGSPL during the said period. It is however, observed that as per the material available on record and the data collected from NSE, Mr. Puneet Aggarwal was allotted a trading terminal by the Noticee with User ID 13326 and the same was activated on June 13, 2001 and deactivated on October 19, 2007. The said terminal was again activated on October 22, 2007 and is still active.
- h. NSE, vide e-mail dated May 8, 2015 has also provided the trading volume of the transactions executed through the terminal allotted by the Noticee to Mr. Puneet Aggarwal for the financial years 2006-07, 2007-08 and 2008-09 as Rs.77.38 crores, Rs.179.30 crores and Rs.86.75 crores respectively. In view of the same, the contention of the Noticee that they stopped dealing with BGSPL after the receipt of SCN dated June 19, 2006 from SEBI is not supported by facts, and, therefore unacceptable.
- vi)** In respect of the allegations mentioned at item No. (iv),
- a. It is observed that the terminal assigned to the Noticee by NSE at Marris Road Office, for both the Cash and F&O segments, was being operated by the employees of BGSPL, *viz.* Mr. Sunil Sagar and Ms. Neha Goyal. BGSPL was neither an authorized entity nor a registered sub-broker at the relevant time.

- b. Noticee contended that the aforesaid terminals of Marris Road Office at the Aligarh branch were operated by their own employees (*viz.* Mr. Lokesh (User ID-11223), Mr. Dinesh Rohilla (User ID-11224), Mr. Ramesh Arora (User ID-3971) and Mr. Atul Aggarwal (User ID-Z)) and not by the employees of BGSPL, as alleged. It is however observed that NSE, vide e-mails dated March 31, 2011 and April 15, 2011 indicated that the aforesaid details of the employees and User IDs, furnished by the Noticee to SEBI did not pertain to the Aligarh Office and the said details pertained to the terminal of the Noticee at their Delhi Office. Noticee, in the reply to the post enquiry SCN, however submitted the names of the aforesaid employees were shown as those pertaining to Delhi Office (as per the e-mails dated March 31, 2011 and April 15, 2011 of NSE,) as the Noticee shifted the VSAT terminals and linked User IDs (the aforesaid employees) of Chandra Market Office to Saharanpur, Aligarh and thereafter to Delhi.
- c. It is however observed that the Noticee failed to furnish the salary slips or the relevant bank statements from the month of December, 2004 to February 2005 in support of their contention.
- d. SEBI Circular No. SMDRP /Policy/ Cir-49/2001 dated October 22, 2001 and NSE Circular No. 163 Ref. No. NSE/MEM/1591 dated April 20, 2000 provides: "*No trading terminals shall be located at places other than the stock brokers' registered office and/or its branch office or at the place of registered sub-broker's office*". The said circular clearly prohibits unregistered sub-broking activities by misutilization of the trading terminals granted to stock brokers at various locations. SEBI, vide the said circular advised stock exchanges to grant terminals only at the members' registered office, branch offices and its registered sub-brokers' offices and to take action against any broker who misutilizes or lets misutilization of their trading terminals for unregistered sub-broking activities. Further, NSE Circular No.163 Ref.No. NSE/MEM/1591 dated April 20, 2000 *inter alia* provides that the trading terminals shall be under the direct control of the trading member and be managed either by an authorized employee or a registered sub-broker of the trading member.
- e. Under the facts and circumstances as detailed above, I agree with the findings of DA that the Noticee, by allowing BGSPL (who was neither an authorized person nor a registered sub-broker) to use their trading terminals, has violated the provisions of SEBI Circular No. SMDRP /Policy/ Cir-49/2001 dated 22/10/2001 and NSE Circular No.163 Ref. No. NSE/MEM/1591 dated April 20, 2000.

**B. Difference in the price of shares mentioned in the Manual Register maintained at Marris Road Office of the Noticee and the Stock Exchange Trade Data to the disadvantage of the clients.**

- i) It was alleged that the price of certain securities mentioned in the manual register (maintained at the Marris Road office of the Noticee) did not match with the price as per the stock exchange trade data. It was therefore alleged that the Noticee has violated Regulation 3.6.1 of the Regulations (F&O Segment) of NSE, which stipulates “*Every trade member shall issue a contract note to his constituents for trades executed in such format as may be prescribed by the Exchange from time to time with all relevant details as required therein to be filled in, and issued in such manner within such time as specified by the F&O Segment of the Exchange*”.

**Findings**

- ii) There was a difference between the price mentioned in the manual register (observed by the inspection team from the office of the Noticee at Marris Road) and the trade data of the stock exchange. For instance, the price of the scrip of IPCL, as per the trade data of the exchange, is Rs. 172.5 and as per the manual register, it is Rs. 172. The DA has cited 8 such instances in the Report.
- iii) Noticee, in the reply, vide letter dated January 31, 2012, denied the ownership of the manual register and contended that all the contract notes relating to the trades done by it were issued by them from the Head Office at Delhi and they would not keep any electronic or manual records at their Marris Road Office. They also stated that there is no difference in the prices mentioned in the said contract notes and the trade data of the stock exchange. It is noted that apart from mere denial, the Noticee has not submitted any material evidence to prove that they had issued contract notes to their clients for the aforesaid trades executed by them and the prices in the contract notes match with the trade data of the stock exchange.
- iv) As the Noticee has not produced any evidence to the contrary including the contract notes issued to their clients in respect of the aforesaid transactions in support of its contention that the prices in the contract notes match with the trade data of the stock exchange, I fully agree with the findings of DA that the Noticee by not issuing contract notes in the prescribed format as prescribed by the Exchange has violated the aforesaid Regulation 3.6.1 of the Regulations (F&O Segment) of NSE.

### **C. Trading outside the Stock Exchange Mechanism-**

- i) It was alleged that certain transactions appearing in the manual register (maintained by the Noticee at their office) were not executed on the stock exchange. It was therefore alleged that the Noticee had carried out illegal trading outside the stock exchange mechanism, in violation of the provisions of Section 19 of Securities Contracts (Regulation) Act, 1956 (**SCRA**) (which prohibits execution of transactions outside the recognized stock exchange). Section 19 of the SCRA states: "*No person shall, except with the permission of the Central Government, organize or assist in organizing or be a member of any stock exchange (other than a recognized stock exchange) for the purpose of assisting in, entering into or performing any contracts in securities*".

#### **Findings**

- ii) DA in the report, cited 33 instances of transactions that appeared in manual register but not executed on stock exchange. It is observed from the table given in the Report (Table at Page 21 and 22 of the Report), which contained the details of the buy and sell transactions in respect of certain scrips (as reproduced from the manual register maintained by the Noticee), that the said entries have not been executed on the trading platform of the stock exchange (NSE), on which the scrips are listed.
- iii) Noticee, in the reply dated January 31, 2012 stated that they did not maintain any manual register and the trades mentioned in the said alleged manual register were not executed through them. Apart from merely asserting that they did not maintain any manual register at their office, Noticee failed to furnish any material to substantiate their contention. Further, one cannot ignore the fact that the said manual register was recovered from the office of the Noticee at Marris Road by the inspection team. In these facts and circumstances the Noticee cannot deny the ownership of the said Manual Register.

Considering the fact that the entries in the manual register are not reflected in the trades executed on the stock exchange, the only inference that can be drawn is that the said register contains entries of transactions executed outside the platform of the stock exchange.

- iv) Under the facts and circumstances, I fully agree with the findings of DA that the Noticee, by executing trades outside the trading system of stock exchange, has violated Section 19 of the SCRA.

## **Irregularities and Violations observed during the inspection at the Offices of the Noticee at Delhi:**

### **A. Transactions without Member-Client Agreements**

- i) It was alleged that the Noticee had transacted with clients without executing member-client agreements and hence violated SEBI Circular No *SMD/Policy/CIR/5-97* dated April 11, 1997 and Clause D(1) of the Code of Conduct for Stock Brokers specified under Regulation 7 of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992. The Noticee failed to provide the member client agreements bearing the date of issuance of stamp paper on the reverse side, in respect of three of their clients selected for sample scrutiny by the inspection team (*viz.* Mr. Dinesh Kumar Saraswat, Ms Rani Trivedi and Mr. R.K. Gupta), in both cash and F&O segment. Further, the member-client Agreements for 33 clients of its Karnal Branch submitted by the Noticee to the DA were executed subsequent to the inspection by SEBI.

### **Findings**

- ii) Even though the Noticee in the reply dated January 31, 2012 stated that they have executed member client agreements with three of their clients selected for sample scrutiny (*viz.* Mr. Dinesh Kumar Saraswat, Ms Rani Trivedi and Mr. R.K. Gupta), the member client agreements furnished by the Noticee did not contain the details of the dates of issuance of stamp paper on the reverse side. In view of this, during the hearing held on April 22, 2015, the Noticee was specifically required to submit (for sighting) the originals of the aforesaid member client agreements. On perusal of the original documents submitted by the Noticee, it is observed that the dates of issuance of stamp paper are prior to the execution of the agreement, indicating that the Noticee dealt with the aforesaid clients only after executing the member client agreements. In view of this, the Noticee cannot be held liable for the charge of not executing the member clients agreements in the aforementioned instances.
- iii) Under these facts and circumstances, I am not inclined to accept the findings of the DA in respect of the allegation that the Noticee transacted with the aforesaid clients without executing member client agreements.
- iv) With regard to the member client agreements of 33 clients of Karnal branch (selected for sample basis by the inspection team), the Noticee, vide letter dated January 31, 2012 submitted that the

member client agreement executed with them earlier were misplaced and later found to be substantially damaged, hence they are submitting the new agreements executed subsequent to the inspection. Noticee, vide letter dated May 5, 2015 furnished the copies of the said member client agreements. On perusal of the data, in respect of the details of first trade executed by the 22 of the aforesaid 33 clients, received from the exchange, it is observed that the Noticee has executed member-client agreements of 5 clients before the date of transactions. The member client agreements of the remaining 17 clients were entered after the date of transactions. In the absence of any other evidence to substantiate the contention by the Noticee, that they had executed the member client agreements before dealing with the aforesaid 17 clients, the only reasonable conclusion that can be drawn is that the Noticee had dealt with the said 27 clients without executing the member-client agreements.

- v) SEBI Circular No *SMD/Policy/CIR/5-97* dated April 11, 1997 and Clause D(1) of the Code of Conduct for Stock Brokers specified under Regulation 7 of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992, stipulate that stock brokers are required to enter into Client Registration Form and Broker-Client agreements in the format prescribed therein, with the clients.
- vi) In the facts and circumstances as mentioned in the above paragraphs, it is observed that in respect of the aforesaid three clients taken for sample purpose, I am inclined to accept the submissions of the Noticee that they had transacted with their clients by executing member client agreements. However, as regards the allegation of non-execution of member client agreements in respect of 33 clients, the copies of the agreements submitted by the Noticee and the data (of the 22 clients) received from the NSE (vide letter dated May 5, 2015) clearly indicate that 17 of the agreements were executed subsequent to the date of transactions. In view of this, I am constrained to reject the contention put forth by the Noticee that they had transacted with their clients by executing member client agreements. The Noticee, is therefore found to have violated SEBI Circular No *SMD/Policy/CIR/5-97* dated April 11, 1997 and Clause D(1) of the Code of Conduct for Stock Brokers specified under Regulation 7 of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992.

**B. Non-segregation of Noticee's Funds and Clients' Funds:**

- i) Though the Noticee had separate bank accounts in respect of own transactions and clients transactions, on scrutiny of the *Business Bank Book* maintained by the Noticee, it was observed that

the Noticee did not maintain proper segregation between own funds and clients' funds and has used the client's account for purposes other than those specified under SEBI Circular No. SMD/SED/Cir/93/233321 dated November 18, 1993.

- ii) There were **(I)** 29 instances (from the *Business Bank Book* maintained by the Noticee) wherein the Noticee had received payments from and/or made payments to clients in/from own bank account maintained with HDFC Bank (Acct. No.231252029) and **(II)** 8 instances wherein Noticee has used clients' Account maintained with HDFC Bank (Account No.231252002) for purposes other than those specified under SEBI Circular No. SMD/SED/Cir/93/233321 dated November 18, 1993.

**(I) Instances/Entries (29 instances) of receipts from and /or made payments to clients in/from the Noticee's own account maintained with HDFC Bank (Acct. No.231252029)**

The following instances (1 to 4) indicate that the Noticee, by transferring funds from their own account to the accounts of the clients, has failed to maintain proper segregation of own funds and clients' funds.

**1. Four instances of payments made to the client, Mr. Anurag Batra -**

**Findings**

- a) Noticee, in their reply vide letter dated January 31, 2012 stated that the entries of payments made to Mr. Anurag Batra were for the consultancy services rendered by the client to the Noticee. The Noticee also submitted that the bill dated March 31, 2005 was raised for the consultancy service rendered by Mr. Anurag Batra during the FY 2004-2005.

It is observed that the payments to Mr. Anurag Batra were made on January 28, 2004, May 05, 2004, August 05, 2004 and December 30, 2004. However, on perusal of the bills forwarded by the Noticee, it is observed that the bills were dated March 31, 2005. Noticee has not yet furnished any material/document to prove that Mr. Anurag Batra has provided any consultancy services to the Noticee.

**2. Two instances of entries of payments made to the clients, viz. BGSPL and Krishna Stock Management-**

**Findings**

a) Noticee, in their reply to DA had submitted that the amounts (Rs. 10,200/- and Rs. 7,560/-) were paid to HCL Comnet (for installation charges, etc.) and SHILPI (for software) and that the same were wrongly debited to clients, viz. BGSPL and Krishna Stock Management by Noticee's Accountant. In support of this, Noticee furnished to the DA, a copy of the ledger account of the clients (rectifying the entry). DA, after perusing the said ledger account, observed that instead of crediting the said amounts in the account of HCL Comnet and SHILPI and debiting the accounts of BGSPL and Krishna Stock Management, the amounts were found to have been credited in the accounts of BGSPL and Krishna Stock Management.

Noticee in their reply vide letter dated January 31, 2012 to the post enquiry SCN has come up with a totally new contention that BGSPL paid Rs. 10,200/- to HCL Comnet for installation of the VSAT antennae and other structures at the Noticee's premises. Similarly, Krishna Stock Management paid Rs. 7,560/- to SHILPI for the software on behalf of Noticee. Noticee submitted that while reimbursing the said amounts to the accounts of BGSPL and Krishna Stock Management, the amounts were inadvertently debited to the clients' account, instead of Noticee's own account. It is however observed that Noticee has not furnished any concrete evidence such as the bank statements indicating the payments for the software, made by BGSPL and Krishna Stock Management (on behalf of the Noticee) to HCL and SHILPI respectively. In view of this, the contention put forth by the Noticee cannot be accepted.

### **3. Twenty one entries of receipts/payments to their account from certain entities-**

#### **Findings**

a) Noticee submitted that the receipts/payments to Noticees' account were to/from the Stock Broker FMS Securities, with whom they had business relation. It was also submitted that the Noticee had borrowed money from FMS Securities. It is however, observed that the Noticee has not yet provided/furnished any material/document to support their claim that they had business relation with FMS Securities.

### **4. Two instances of payments made to Mr. Amit Madan-**

#### **Findings**



- a) Though, it was contended by the Noticee that the said payments were made to a software vendor on behalf of the client, *viz.* Mr. Amit Madan, Noticee failed to produce any evidence in support of their contention.

**(II) Instances (8 instances) wherein the Noticee has used clients' Account (Account No.231252002) maintained with HDFC Bank**

The following instances (1 to 3) indicate that the Noticee failed to maintain proper segregation of own funds and clients funds and made receipts/payments to/from the clients' accounts, for transactions in which the member broker is taking a position as a principal.

**1. Four Instances of receipts made from the account of K & K Health Care to the client's account-**

**Findings-**

- a) Noticee in their replies vide letters dated January 12, 2012, July 16, 2014 and May 5, 2015 submitted that short term funds (*i.e.* Rs. 5 lakh) on each instance was taken from K&K Health Care to meet pay in obligations which were directly deposited in client's account due to emergency and repaid to K & K Healthcare from its business account maintained with HDFC Bank. The copies of the bank statements showing the repayments of the said amount have been submitted, vide letter dated January 31, 2012.

I am, however of the view that receiving short term loan from third party to client's account for Noticee's use and repaying the same from clients account is not permissible and the Noticee should have taken enough care and diligence to avoid such transactions from client's account.

**2. Two instances of receipt of payments from the accounts of Mr. Ajay Kumar Upadhyay and Mr. Sunil Malik to Client's account -**

**Findings**

- a) Noticee submitted that Mr. Ajay Kumar Upadhyay and Mr. Sunil Malik were their clients and the amounts of Rs.45,000 and Rs.50,000 were correctly received in the client's account. The copies of member client agreements of the said clients have been submitted by the Noticee.

It is observed that even though the date of agreement and the date mentioned in the KYC documents of Mr. Ajay Kumar Upadhyay and Mr. Sunil Malik (furnished by the Noticee ) was July 6, 2003, the date of issuance of the stamp paper of Mr. Ajay Kumar Upadhyay was not mentioned in the said document. In view of this, during the hearing held on April 22, 2015, the Noticee was specifically required to submit the member client agreement of Mr. Ajay Kumar Upadhyay bearing the date of issuance of stamp paper. Noticee, vide letter dated May 5, 2015 (subsequent to the hearing held on April 22, 2015), submitted the copy of Member -client Agreement of Mr. Ajay Kumar Upadhyay, with the date issuance of the stamp paper. In view of this, I am inclined to accept the contention put forth by the Noticee that the said persons are their clients and that the amounts were correctly received in the clients account.

**3. One instance of payment of Rs. 1000 from the client's account and another instance of issuance of cheque from the client's account -**

- a) Noticee stated that the amount of ₹ 1,000 was paid for NCFM test on behalf of their client, viz. Mr. V.S. Rastogi and the amount had been recovered from his account on March 31, 2005. The said amount has been adjusted to his ledger. It is however observed that the payment of fees to NCFM test from the client's account and issuance of cheque from the client's account, amounts to making payment to a third party on behalf of the client, which is not permissible under law.

In respect of the issuance of cheque from the client's account, Noticee stated that the cheque was accidentally issued by mistake from client's account on November 22, 2004 against which they had transferred ₹5 lakhs from their business account (HDFC) to client's account (HDFC) on November 23, 2004 *i.e.* next day of making the accounting mistake. Statement of accounts of HDFC business account and HDFC client's account as on November 23, 2004 were submitted. As regards the change in the account numbers mentioned in the said bank statements submitted by the Noticee, the Noticee submitted that the account numbers of the aforesaid accounts had changed due to the system up gradation at the bank (*i.e.* the account No. 231252029 has been changed to 003034001798 and the client account No. 231252002 has been changed to 00303400178). I am inclined to accept the submissions that the transfer of money had occurred out of mistake and that the said amount was transferred on the next day of making the mistake.

- iii) SEBI Circular No. SMD/SED/Cir/93/23321 dated November 18, 1993 provides for the norms to be followed by stock brokers while transferring and receiving money from client's account and broker's account. The said circular had mandated stock brokers to maintain proper segregation of own funds and clients funds and that no payment for transactions in which the member broker is taking a position as a principal would be allowed to be made from the clients' accounts. The circular distinguishes very clearly what money to be paid into and from client's account.
- iv) The aforesaid instances, as detailed in the aforesaid Paragraph Nos. (I) and (II) clearly indicate that the Noticee, by receiving payments and/or making payments (in 29 instances) from/to their own business account of the Noticee maintained with HDFC (Account No. 231252029) from/to clients and by using client's account (Account No.231252002) maintained with HDFC Bank for purposes other than those mentioned in the SEBI Circular (in 5 instances), has not maintained proper segregation between their own and clients' funds. In view of this, I find that the Noticee has contravened the mandatory requirements of the SEBI Circular No. SMD/SED/Cir/93/23321 dated November 18, 1993.

### **C. Delay of remittance of Dividends to Clients**

- i) It was alleged that the Noticee had made delay in remittance of dividends to their clients, violating Clause A(1) of the Code of Conduct for Stock Brokers specified under Regulation 7 of the Brokers Regulations.

#### **Findings**

- ii) DA has provided a table (at Paragraph No. 57 of the Report) containing the details of the dividend received and paid date (in respect of 24 instances) by the Noticee, as observed by the inspection team, *vis'a vis* the reply given by the Noticee mentioning the details of the dividend received date and paid date. As per the details provided by the inspection team, there was delay (ranging between 4 to 73 days) in remittance of dividend to the clients by the Noticee in 24 instances. It is however observed that the the Noticee had furnished the copies of dividend warrants for 13 instances, wherein the details of cheque *viz.* "Cheque received dated on..." were mentioned. No details were submitted in respect of the remaining 11 instances. DA did not consider the said documents as conclusive evidence of proof of date on which dividends were paid, as the dates of issuance of cheque (in respect of the dividends) were hand written.

In the absence of any other concrete evidence including bank statement showing that the dividend has been credited in the account of the clients on the next day of the day of receipt, DA did not find any merit in the contention of the Noticee.

- iii) The Noticee in the reply to the post enquiry SCN submitted that the dividend amount was ordinarily credited to the client's ledger account and not into their bank account, unless the clients specifically make request for a payout of the dividend amount.
- iv) For clients to receive payment, the dividends should be credited to clients' bank account. In the instant case, the Noticee did not credit the dividends to the bank accounts of clients, instead kept the dividend amounts in his clients' ledger account. Moreover, in absence of any other evidence (such as the bank statements, etc.), to prove that the dividends have been credited to the clients without delay the contention put forth by the Noticee that all payments were made in a timely manner cannot be accepted.
- v) Clause A(1) of the Code of Conduct for Stock Brokers specified under Regulation 7 of the Brokers Regulations provides that a stock broker shall act with due skill care and diligence in the conduct of all investment business.
- vi) In the facts and circumstances, I observe that the Noticee, by not crediting the dividends to the clients, without delay, has failed to act with due skill care and diligence in the conduct of all investment business as a stock broker, violating the Clause A(1) of the Code of Conduct for Stock Brokers specified under Regulation 7 of the Brokers Regulations.

**D. Cash dealings with clients**

- i) It was alleged that the Noticee has done cash dealings with clients, violating SEBI Circular No. SEBI/MRD/SE/Cir-33/2003/27/08 dated August 27, 2003 which stipulates that the broker should not accept cash from clients against purchase or as margin and also not give cash against sale of securities.

**Findings**

- ii) Considering the submissions made by the Noticee that the cash was accepted only in one case and the same was due to exceptional circumstances as client did not have any balance in his bank account and that the client was going out of station, DA in the Report recommended a lenient view to be taken in respect of this violation.

I agree with the recommendation of DA as the particular charge is in respect of a single transaction. Considering the same, I am inclined to take a lenient view in respect of the violation.

**E. Non- collection/Short collection of daily margin/upfront margin from clients**

- i) It was alleged that the Noticee failed to collect the margin from clients as prescribed by SEBI Circular No. SMD/Policy/Cir-12/2002 dated May 17, 2002 and NSE Circular no. NSCC/M&S/1811 dated August 24, 2001 and NSE/CMPT/3298 dated March 28, 2002 with regard to collection of margin.

**Findings**

- ii) It is observed from the Report that the value of the securities submitted by the Noticee was considered and the shortfall in the daily margin had been recalculated by DA. Even after taking into account the value of aforementioned securities lying in the beneficiary account there was a shortfall in many instances. The details of the shortfalls observed by DA (after recalculation) have been detailed in a table in Page No. 37 and 38 of the Report. From the said table, it is observed that the shortfall of daily margin was observed in as many as 32 instances. Further, there was only one instance of shortfall of upfront margin, out of 63 instances cited by DA.
- iii) In respect of the contention put forth by the Noticee that the SEBI Circular and NSE Bye-laws, Rules/Regulations and Circulars do not stipulate any stock broker to collect margins upfront from clients, it is observed that as per the aforesaid SEBI circular dated May 17, 2002, if clients position exceeds Rs. 5 lacs, the broker would be necessarily required to collect 10% margin from the clients. In view of this, the contention put forth by the Noticee is rejected.
- iv) As regards the importance of collection of margins, it is also noteworthy to mention the following observations by the Hon'ble Securities Appellate Tribunal (SAT) in ***Appeal No.152 of 2013; SMC Global Securities Ltd. Vs. SEBI*** (decided on January 31, 2014), wherein the importance of margin collection for the stability of securities market has been elaborately discussed. It was observed:

*"Margin money has always played an important role in containing risks which are inherent in the functioning of any capital market. Owing to its non-adherence huge market crashes have been witnessed all over the globe in the recent past.....The vital position that the margining system holds as a crucial instrument to maintain market equilibrium can never be undermined. It is, therefore, pertinent for all market players to maintain the sanctity of margining as a risk management tool while dealing in securities, be it in the cash or in the F & O segment"*

Similarly, SAT in another case (**Appeal No. 151 of 2013; Grishma Securities Pvt. Ltd. Vs. SEBI decided on October 28, 2013**) observed as under:

*"Various circulars issued by the SEBI from time to time have led to a well developed margining system in India. The collection of margins as a regulatory requirement prescribed by the SEBI is a pre-requisite. Its sanctity cannot be undermined by allowing the appellants to bypass such requirement of margin collection beforehand. Such an act puts the entire system at risk making it a systemic issue which may have serious repercussion on the capital market. Therefore, collection of margin as a risk management tool to cover for counter party risk is an integral part of the regulatory system conceived and implemented in practice by SEBI consistently..... "*

- v) In the facts and circumstances mentioned above, I agree with the findings of DA that even after considering the value of securities submitted by the Noticee there was shortfall of margin in as many as 32 instances in collection of daily margins out of the total 52 instances. Noticee, therefore has violated SEBI circular no. SMD/Policy/Cir-12/2002 dated May 17, 2002, NSE circular nos. NSCC/M&S/1811 dated August 24, 2001 and NSE/CMPT/3298 dated March 28, 2002.

**F. Wrong Reporting and shortfall of Margin to the Exchange**

- i) It was alleged that the Noticee had wrongly reported margin in respect of F&O segment in violation of NSCCL Circular No. NSCC/F&O/C&S/97 dated February 01, 2002, which provides for reporting of margin in prescribed format. The details of the same are reproduced in the table at Page No. 54 to 57 of the Report. According to DA, there was also shortfall in collection of margin in many instances in the aforesaid table.

**Findings**

- ii) Noticee in their reply dated January 31, 2012 to the post enquiry SCN stated that there were errors in the calculation of "*Final Wrong Reporting*" as set out in the table at Page No. 54 to 57 of the Report. Noticee stated that in the 2nd row of the said table, there was a shortfall of margin by Rs.1,64,714.90 whereas the Noticee had reported the margin requirement as Rs.1,37,130 and the margin collected as Rs.1,45,000. The Noticee pointed out that DA failed to consider the credit balance of ₹1,27,170 and the value of shares available, which was ₹1,80,135/-. Noticee, thus submitted that even with 50% haircut, the total value of funds and shares available would be sufficient to cover the margin requirement.

- iii) As regards, the errors pointed out by the Noticee, in the calculation of "*Final Wrong Reporting*" as set out in the table at Page No. 54 to 57 of the Report, it is observed from the instances given in the inspection report (Annexure 31& 32 of the inspection report forwarded to the Noticee, vide letter dated July 05, 2005) that the errors in the said table (given in the enquiry report) were typographical errors. For instance, in 2nd row of the said table in the enquiry report, CM Ledger Balance is shown as Rs.7898865/- instead of Rs.789886.50.
- iv) With respect to the allegation regarding the shortfall in collecting margins, it is noted from the 46 instances cited in the aforesaid table in the Report, there was a shortfall in 17 instances. For instance in the first row (of the aforesaid table) as per the stock exchange requirement, the Noticee was required to collect margin of Rs. 34,887.50/-. Noticee however had reported the margin collected as Rs. 45,000/-. On verifying the client funds and securities available with the Noticee, in respect of the particular client, it is observed that the total balance with the Noticee was Rs. -1,94,384/-. From this, it is clear that the Noticee had wrongly reported to the exchange that they had collected the required margin, thereby exposing the system to risk. 16 such instances of insufficient margins were noted in the said Table. In view of this, I agree with the findings of DA that not only there was shortfall in collection of margin but also there was wrong reporting of margins collected to the Exchange in the said instances.
- v) As regards, the allegation of wrong reporting, it is observed from the said table mentioned in the Report that there were 29 instances of wrong reporting of margin by the Noticee. For instance, in the 2nd row of the above table the margin reported to have been collected was Rs.1,45,000/- as against the requirement of Rs.1,37,130/-. The client had Rs.1,21,709.90 in ledger and Rs.1,80,135/- towards securities margin, *i.e* a total of Rs.3,01,844.90 was available. However, the amount mentioned in the last column, *i.e* the final wrong reporting was Rs. 1,64,714.90/-.
- vi) In view of this, I agree with the findings of DA that the Noticee reported wrong data to the exchange. Providing incorrect information to the stock exchanges can result in serious repercussions. By making incorrect reporting the Noticee violated provisions of NSCCL circular no. NSCC/F&O/C7S/97 dated February 01, 2002.

**G. Non-submission of information of CTCL terminals to Exchange**

- i) From the list of trading/CTCL terminals submitted by the Noticee to the SEBI inspection team, it was observed that details of several locations of their trading terminals were not submitted to the Exchange. Following locations of the trading/CTCL terminals mentioned in the aforesaid list submitted by the Noticee to the inspection had not been submitted to the exchange:

User name and relationship with broking entity	Location of the CTCL terminal
Kishan Kumar claimed as employee of the Group company	Shop No. 1, Pocket 2, Phase-1, Mayur Vihar Delhi
Ram Talwar, claimed as employee of the Group company	Mittal Bld. Laddoo Wali Road, Jalandhar (Punjab)
Nitin Agarwal, claimed as employee of the Group company	56/33, Site 4, Industrial Area, Sahibabad, Ghaziabad
N K Agarwal, claimed as contract employee of the company	Shop No. 13, Sec 15A, Part-I, Mkt, Faridabad
Pankaj Chauhan, claimed as trainee	Shop No. 13, Sec 15A, Part-I, Mkt, Faridabad
M D Sharma, claimed as employee	216, II floor, Ratnadeep Complex, Bareilly
Pankaj Sharma, claimed as employee	Opp Anaj Mandi, Taruari, Karnal
Rajesh Ablani, claimed as employee in Group Company	103, Mahavir Complex, Nai Sarak Gwalior
Atul Kumar, claimed as employee in Group Company	Chandra Market, Railway Road, Aligarh
Gagandeep, claimed as employee in Group Company	51, Morar Enclave, Gola Ka Mandir, Gwalior
Col. T S Singha, claimed as employee in Group Company	Near Goodwill, Maruti Service Station, Tali Morth New Plots, Jammu Tawi
Anuj Aggarwal, claimed as employee in Group Company	3, 2 <sup>nd</sup> Floor, Dayal Mkt, Gaziabad
Vikas, claimed as employee	C-2/135, Gopal Nagar, Hanuman Gate, Yamuna Nagar, Haryana
Avinash Kumar, claimed as employee in Group Company	KB-123, Kavi Nagar, Gaziabad
Vivek Kumar, claimed as employee in Group Company	Maina Wali Gali Dal Bazaar, Gwalior

- ii) As can be seen from the above list, the Noticee claims that all the aforesaid persons (given under the column “*User name and the relationship with the Broking Entity*”) are their employees. On perusal of the *connection log*, it was however observed that instead of the names of the aforesaid persons, the names of the clients of the Noticees are given as User Ids. It was also observed that the aforesaid location of CTCL given were found to be the addresses of the said clients. In view of this, it was alleged that the Noticee by allotting the trading terminals/CTCL terminals to their clients at the addresses of the clients, has violated SEBI Circular No. SMDRP/Policy/Cir-49/2001 dated October 22, 2001 and NSE Circular No. 282 dated August 29, 2002 which requires that brokers shall allot trading terminals in the branch offices and their registered sub-broker’s offices. It was also alleged that the Noticee, by submitting false information to the SEBI inspection team, has violated Clause C(6) of the Code of Conduct for Stock Brokers specified under Regulation 7 of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992.

### Findings

- iii) On comparing the list (which contains the User names, relation and location) given by the Noticee to the inspection team with the *connection log* (which contains the User IDs and location), it is observed that the names mentioned under the head *User names* in the list provided by the Noticee to inspection team are different from the names mentioned as *User IDs*, in the *connection log*. Further the address given under



the head location of the terminals were the same as that of the clients (clients mentioned in the *connection log*).

- iv) Noticee has not denied the fact that the names of persons mentioned in the *connection log* are their clients. Noticee stated that the *User* IDs were created with nomenclature of Noticee's major clients of the respective branches, hence the names of their clients are appearing in the *connection log*. This cannot be treated as a plausible explanation in the light of the fact that the corresponding addresses mentioned in the *connection log* were also found to be of their clients. It is also observed that till date, the Noticee has not submitted the relevant bank statements of having paid rent to the landlords, salary slips of their employees (mentioned in the above table) during the relevant period, to prove their contention that the said persons (listed in the table above), who stated to have operated the terminals of the Noticee were in fact the employees of the Noticee.
  
- v) The Noticee, vide their reply dated January 31, 2012 furnished a set of photo copies of unregistered lease agreements entered into with certain persons, who claimed to be owners of the premises/locations where the terminals of the Noticee are located. It is however, observed that Noticee has furnished photo copies of the lease agreement, which were also not registered.
  
- vi) In the facts and circumstances as stated above and also in absence of submission by the Noticee of any concrete evidence to prove that the said premises were the branch offices of the Noticee and the persons, who said to have operated the terminals were employees of the Noticee, I am unable to accept the contentions put forth by the Noticee. In view of this, I agree with the findings of the DA that the Noticee by allotting its terminals to locations other than its registered office or branch office and allowing unauthorized persons to operate their accounts, has violated SEBI Circular No. SMDRP/Policy/Cir-49/2001 dated October 22, 2001 and NSE Circular No. 282 dated August 29, 2002. I also agree with the findings of DA that the list given to the inspection team by the Noticee contained incorrect information as to the *User* IDs. The Noticee, therefore found to have submitted incorrect information to the inspection team (as observed in Paragraph No.G (iii) above) and hence violated the provisions of Clause C(6) of the Code of Conduct for Stock Brokers specified under Regulation 7 of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992.

#### **H. Clients acted as unregistered sub-brokers and Broker aided and abetted the clients.**

- i) On scrutiny of clients ledger, demat ledger, contract notes etc. issued by the Noticee to the clients, the inspection team found that the Noticee has been dealing with a large number of clients whose names, trading volumes, delivery patterns etc. indicated that a list of top 33 clients of the Noticee (including BGSPL) were acting on behalf of many other clients, indicating that they were acting as unregistered sub-brokers. It was observed that brokerage had been paid to 4 of their clients, and also deliveries had been received from/to the beneficiary account of the clients from/to many beneficiary IDs of third parties. It was also observed that the Noticee provided National Exchange for Automated Trading Terminals (NEAT) at the addresses of 6 of their clients, *viz.* Shree Capital Services, R C Securities, Sprint Securities, Utkarsh Global Services, Vivek Kumar Gupta and Krishna Stock Management. In view of this, it was observed that the Noticee, aided and abetted their clients to act as unregistered sub-broker, and hence violated Section 12 of SEBI Act and Rule 3 of Brokers Rules.

Noticee by allowing its trading terminals to be used by their clients for carrying out unregistered activity and also on account of dealing with unregistered sub-brokers alleged to have also violated SEBI Circular No. SMD Policy/Circular/3-97 dated March 31, 1997 which provides that no broker shall deal with a person who is acting as a sub-broker unless he is registered with SEBI.

- ii) In view of the aforesaid activities, Noticee was also alleged to have violated Clause A(2) of the Code of Conduct for Stock Brokers specified under Regulation 7 of Brokers Regulations for not exercising due skill, care and diligence while dealing with such clients.

### **Findings**

- iii) Noticee, in their reply stated that some of their clients were doing marketing business for the Noticee and marketing charges are being paid to them. Noticee also stated that they have submitted applications for sub-broker registration in respect of the four of their top clients who were alleged to have acted as unregistered sub-brokers. It is observed that the Noticee has not given any satisfactory reply to the allegation, other than merely stating that they have submitted applications for sub-broker registration. Moreover, the sub-broker registration certificates submitted by the Noticee were found to have been issued by SEBI, subsequent to the inspection. These facts lead to the reasonable inference that at the time of inspection, the said clients were indeed acting as unregistered sub brokers. No concrete evidence has been produced by the Noticee to prove that the payments made by them to the clients were merely

marketing charges paid to the clients for doing the marketing business and they were not accepting brokerages as alleged.

- iv) With regard to the deliveries received from/to the beneficiary accounts of the clients from/to many beneficiary IDs of other persons/entities, Noticee, in the reply dated January 31, 2012 submitted that beneficiary accounts from which some of their clients received shares (or shares were received in their margin/pool account) did not belong to their clients and those were the accounts of third parties. It was also contended that the Noticee could not refuse delivery from third party beneficiary accounts, especially when such accounts were those of relatives of their clients. It is noted that the Noticee did not make this contention before the DA and hence the same appears to be an afterthought. Moreover, it is observed that mere contention that they cannot refuse the third party deliveries of their clients' relatives, cannot absolve the Noticee of the charge of aiding and abetting their clients to act as unregistered sub-broker especially when the deliveries have been received from/delivered to many beneficiary accounts (in one case, deliveries were to as many as 81 beneficiary accounts) and the Noticee has not furnished any concrete evidence to substantiate their contentions.
- v) As regards the allegation of allotting NEAT terminals to Noticee's clients, Noticee stated that all the trading terminals are located at their branches and were operated by the employees of the Noticee. It is however, observed that till date the Noticee has not submitted any concrete evidence, such as, bank statement for proof of having paid the rent to landlord, relevant bank statement as well as salary slips for proof of having paid the salary to employees, etc. in support of its contention that terminal installed at the all the locations were its own branches and operated by its own employees. In the absence of any such evidence, no credence can be given to the said contention of the Noticee.
- vi) In the facts and circumstances as observed above, I find that the Noticee allowed their clients to act as unregistered sub-brokers and also allotted their trading terminals to their clients for carrying on activities as unregistered sub-brokers.
- vii) I am of the view that the aforesaid acts of the Noticee, *i.e.* aiding and abetting their clients to act as unregistered sub-broker and allotting their terminals at the addresses of clients and thus allowing it to use for unregistered sub-broker activities are clearly in violation of SEBI Circular No. SMD/Policy/Circular/3-97 dated March 31, 1997, which provides that no broker shall deal with a person who is acting as a sub broker unless he is registered with SEBI.

Clause A(2) of the Code of Conduct for Stock Brokers specified under Regulation 7 of Brokers Regulations, states that a broker shall act with due skill, care and diligence in the conduct of all his business. In the instant case, the Noticee failed to exercise due skill, care and diligence to ensure that his clients are not acting as unregistered sub-broker. In view of this, I agree with the findings of DA, that the Noticee, a SEBI registered stock broker, by allowing their clients to act as unregistered sub- broker, failed to exercise due care, skill and diligence while dealing with such clients and hence violated Clause A(2) of the Code of Conduct for Stock Brokers specified under Regulation 7 of Brokers Regulations.

**I. Transfer of trades from Pro-account to client's account and vice -versa**

- i) It was alleged that the trades executed for pro-account of the Noticee were subsequently transferred to a constituent/client and/or *vice versa*. The instances mentioned in the Inspection Report are as under:

Trade Date	Trade No.	Symbol	Client ID/Noticee's Prop. account	Price	Quantity	Trade trf to
04.01.2005	200501040187349	FUTSTKMASTEK-FF	9304	347.61	1600	C9090
03.01.2005	200501030028957	FUTSTKORIENTBANK-FF	9304	339	1200	C9650
05.01.2005	200501050007111	FUTSTKMTNL-FF	9304	166	1600	C9650

- ii) It was further alleged that the trades executed for one constituent's account were subsequently transferred to another constituent's account. Two such instances are as under:

Trade Date	Trade No.	Symbol	Client ID	Price	Quantity	Trade trf to
06.01.2005	200501060297615	FUTIDXNIFTY-FF	66	1992.0	200	C9010
06.01.2005	200501060261933	OPTSTKMTNL-CA	C102	7.5	1600	C9601

- iii) In view of the above, Noticee was alleged to have violated the provisions of Regulation 3.6.1 of the National Stock Exchange (Futures & Options Segment) Trading Regulations and SEBI Circular No. SMDRP/Policy/Cir-39/2001 dated July 18, 2001.
- iv) Regulation 3.6.1 of the National Stock Exchange (Futures & Options Segment) Trading Regulations provides that every trading Member shall issue a contract note to his constituents for trades executed in such format as may be prescribed by the Exchange from time to time with all relevant details as required therein to be filled in, and issued in such manner and within such time as specified by the F&O Segment

of the Exchange. SEBI Circular No. SMDRP/Policy/Cir-39/2001 dated July 18, 2001 states that it will be mandatory for all brokers to use unique client codes for all clients.

### **Findings**

- v) DA, in the Report, after perusing the *trade files* of January 3, 2005, January 4, 2005 and January 5, 2005 submitted by the Noticee (which indicated that the trades were entered only in the respective client codes and were not transferred from Pro-account as alleged), observed that the said *trade files* cannot be accepted as authentic as the same were given on plain paper. It was also observed that the dates, trade numbers and price mentioned in the *trade files* (given by the Noticee) are different from those observed by the inspection team (as mentioned in the tables above). As the Noticee failed to produce any concrete evidence to substantiate the contention that the trades were genuine, DA observed that the Noticee has violated provisions of Regulation 3.6.1 of the National Stock Exchange (Futures & Options Segment) Trading Regulations and the provisions of SEBI Circular No. SEBI Circular No. SMDRP/Policy/Cir-39/2001 dated July 18, 2001.
- vi) The Noticee in the reply, vide letter dated January 31, 2012, to the post enquiry SCN, reiterated that the trades were placed using the client's codes and not in the pro-account. Noticee has also given an instance of a trade in 1600 Futures Contracts of MTNL27Jan2005 (as already given in *trade file* forwarded by the Noticee as Appendix 63 of their reply dated November 14, 2005 to SEBI), which was entered on January 5, 2005 at a price of 166.00 in client code 9650. The trade number given by the Noticee was 7111. It is, however observed that from the instances of the trades noted by the inspection team, the client code mentioned was 9304 and not 9650.
- vii) As regards, the similar contradictions observed in the *trade files* submitted by the Noticee with those noticed by the inspection team, the Noticee stated that the data in the *trade files* and the contract notes issued by the Noticee were identical. Noticee, pursuant to the hearing held on April 22, 2015, furnished the copies of contract notes in respect of the aforesaid transactions, vide letter dated May 5, 2015. Noticee also stated that in absence of the source of information provided by the inspection team regarding the instances reproduced in the Tables in the Report (reproduced in the tables above), they cannot explain the alleged contradictions.

viii) The aforesaid contract notes in respect of the alleged transactions forwarded by the Noticee were forwarded to NSE for verification. NSE, via e-mail dated May 12, 2015 provided the details of the aforesaid transactions as reported in the exchange platform. The details of the transactions as per the details provided by the exchange *vis-a-vis* the details of the transactions as per the contract notes forwarded by the Noticee are as under:

Serial No.	Trade Date	Trade No.	Order No.	Scrip	Qty	Segment	Client code as per exchange	Client code as per contract note
1	03/01/2005	28957	200501030085919	Oriental Bank of Commerce	1200 (Buy)	F&O	09	09
2	04/01/2005	187349	200501040030940	Mastek	1600 (sell)	F&O	C9090	C9090
3	05/01/2005	7111	200501050022774	MTNL	1600 (Buy)	F&O	9650	9650
4	06/01/2005	261933	200501060771316	MTNL	1600 (Buy)	F&O	C102	C9601
5	06/01/2005	297615	200501060870512	NIFTY	200 (Buy)	F&O	17	17

- ix) From the aforesaid details, it is observed that the client codes in the contract notes and exchange record are same in respect of first three trades. In respect of fourth trade, the exchange has stated that the trade had been executed in the client code C102 which belongs to one Anu Mittal, having address W.E.305, Ali Mohallam, Jalandhar whereas the broker has issued the contract note to the client code C9601 which is in the name of one Raman Kumar Verma having address as 727, J.P. Nagar, Jalandhar. It is also observed from the details furnished by the exchange that the Noticee had not informed the exchange about the modification made to the concerned trade. This indicates that the transaction executed in one account of the constituent was subsequently transferred to another constituent's account (*i.e* trades done in the client code C102 is transferred to C9601).
- x) Further with regard to the transactions mentioned at item No. 5, the exchange has confirmed that the transaction took place in client code No. 17. On perusal of the contract note pertaining to this particular transaction (forwarded by the Noticee, vide letter dated May 5, 2015), it is seen that the client code No. 17 is mentioned as "*Unique Client Code - 17*". It is however observed that the contract note is addressed to the client Krishna Stock Management (Client Code-C9010). I am therefore of the view that this cannot be sufficient evidence that the trades executed in one client's account has been transferred to another client's account.

- xi)** In view of the above, it is observed that out of the aforesaid 5 transactions, 3 transactions were executed with respective client codes, contrary to the charge that the trades executed in the Noticee's proprietary account were transferred to client's account. The allegation of transfer of trades executed for one client's account to another client's account is only in respect of one trade (*i.e.* trade mentioned at Serial No. 4).
- xii)** Under these peculiar facts and circumstances detailed above, I am inclined to take a lenient view in respect of the said allegation regarding the violation of provisions of Regulation 3.6.1 of the National Stock Exchange (Futures & Options Segment) Trading Regulations and the provisions of SEBI Circular No. SEBI Circular No. SMDRP/Policy/Cir-39/2001 dated July 18, 2001 against the Noticee.

## **II. Non-cooperation of the Noticee during the Inspection conducted by SEBI and enquiry proceedings**

- i)** From the material available on records, *i.e.* the inspection report and the report submitted by DA, it is observed that the conduct of the Noticee in co-operating with the inspection team of SEBI was far from satisfactory. DA in the Report also highlighted the non-cooperation on the part of Noticee, to submit complete information/documents/material during the course of enquiry proceedings before him. The following instances of non-co-operation were observed during the course of inspection as well as during the enquiry proceedings:
- a.** During the inspection conducted at Aligarh offices of the Noticee, it is observed that:
- i.** The persons present at the Marris Road Office of the Noticee refused to provide information/copies of the documents to the inspection team.
  - ii.** Mr. Puneet Aggarwal (Director of BGSPL), who was present at the Office of the Noticee refused to provide any documents for verification by the inspection team, even directed the staffs present at the Office of the Noticee at Chandra Market to shut down the back office system.
  - iii.** Subsequent to this, Mr. Manish Aggarwal, director of the Noticee assured the inspection team that Mr. Puneet Agarwal would cooperate with the inspection team and would

furnish all the documents sought by the inspection team. However, the Noticee and Mr. Puneet Agarwal failed to furnish any of the documents sought by the inspection team and also failed to cooperate with the inspection team.

iv. It is also observed from the inspection report and from the Report filed by the DA that the behaviour of Mr. Puneet Agarwal with the inspecting officials of both SEBI and NSE was not proper.

b. Noticee, as a principal is liable for all the actions and omissions committed by Mr. Puneet Agarwal (director of BGSPL), who is acting in the capacity of the branch manager/agent of the Noticee. The facts and circumstances mentioned above clearly indicate the callous attitude of Mr. Puneet Agarwal in not cooperating with the inspection carried out by SEBI. The Noticee as a principal cannot distance from the acts/omissions of BGSPL and Mr. Puneet Agarwal.

c. It is further observed that Noticee failed to cooperate with the enquiry proceedings. The documents submitted by the Noticee such as the certificates of registration of sub-brokership obtained by their clients, ledger accounts of the clients, etc., in respect of the allegation of extending their trading terminal to unregistered entities, were prepared or obtained, subsequent to the inspection periods. Noticee also failed to submit reply to the queries raised by DA during the course of hearing.

ii) I am of the view that, non-cooperation with the proceedings of SEBI, by the Noticee, a SEBI registered intermediary would be seen as a serious misconduct.

8. It is relevant to note that significant responsibilities are entrusted upon the intermediaries registered with SEBI (by relevant Rules/Regulations in respect of Brokers and Sub-brokers), such as to maintain high standards of integrity, promptitude and fairness, not to indulge in manipulative, fraudulent or deceptive transactions or schemes, not to create false market or to indulge in any act detrimental to the investors interest or which leads to interference with the fair and smooth functioning of the market etc. Having been entrusted with such obligations, the Noticee being a registered intermediary was not expected to indulge in such fraudulent and manipulative practice in violation of the provisions of SEBI PFUTP Regulations, 2003 and various circulars issued by SEBI and the Code of Conduct as prescribed for Stock broker in Schedule -II read with Regulation 7 of SEBI Brokers Regulations, 1992. The various requirements under the Act, Rules,



Regulations, Circulars etc. in respect of an intermediary registered with SEBI are enumerated for the purpose of protection of interests of investors and further to ensure that the business and conduct of the intermediaries are undertaken on the basis of sound business principles.

The whole range of allegations as detailed in the forgoing paragraphs, observed by the inspection team such as allowing unregistered persons to operate the trading terminals allotted to the Noticee by the NSE, aiding and abetting BGSPL to carry out unregistered activities by issuing contract notes carrying several client codes (192 unique client codes) to BGSPL, failure to collect adequate daily margins, etc. have been established against the Noticee.

Enquiry proceedings are basically disciplinary proceedings initiated against intermediaries registered with SEBI. Section 12 (3) of the SEBI Act, provides "*The Board may, by order suspend or cancel a certificate of registration in such manner as may be determined by regulations..*" The Noticee, a SEBI registered intermediary (member-NSE), who is duty bound to comply with the rules/regulations/circulars issued by SEBI from time to time, violated many of the relevant provisions of SEBI Act, SCRA, SEBI Broker Regulations/Rules/Circular and also Rules/Regulations/Circulars issued by NSE as detailed in the forgoing Paragraphs.

9. I note that that proceedings in the instant matter had commenced pursuant to the issuance of SCN dated November 22, 2011. Thereafter, an opportunity of hearing was granted to the Noticee on various dates, *i.e.* on June 12, 2014, July 02, 2014, February 27, 2015 and April 22, 2015. It is relevant to note that the documents such as the copies of member client agreements bearing the date of stamp paper, contract notes indicating that the alleged trades were executed in the name of the respective clients and not through the proprietary account of the Noticee, etc. were sought during the course of inspection conducted by SEBI and later during the proceedings before DA. Hence several opportunities were granted to the Noticee to submit the said documents in support of its contentions. However, the aforesaid documents were furnished by the Noticee, vide letter dated May 5, 2015, subsequent to the hearing granted before me on April 22, 2015.
10. In the instant case, I note that violations such as allowing unregistered entities/clients to operate the trading terminals allotted to the Noticee by NSE, aiding and abetting BGSPL to carry out unregistered sub-broker activities by issuing contract notes carrying several client codes (192 unique client codes) to BGSPL, failure to collect sufficient daily margins, etc. are serious in nature and are not expected from an intermediary registered with SEBI. I agree with the DA that such conduct, if not handled firmly with strict penalty, would give wrong signals to the market and set a bad precedent of encouraging indiscipline and non-compliance of

the rules and regulations. Considering all the aforesaid observations, in totality, I find this as a fit case for imposition of a penalty.

DA has recommended a penalty of suspension of certificate of registration of the Noticee for a period of 5 years. I however, find certain mitigating factors, which deserve due consideration. As has been observed above, even though the Noticee failed to furnish the copies of relevant documents required by DA during the enquiry proceedings, a good many of the documents have been furnished subsequent to the hearing held before me on April 22, 2015, (*i.e.* the documents such as the contract notes indicating that the alleged trades were executed in the name of the respective clients and not through the proprietary account of the Noticee, member client agreement with the date of issuance of the stamp paper, etc.). I also note that some of the violations/lapses committed by the Noticee are procedural and some technical which were detected during the inspection. There is no mention of repetitiveness of lapses/violations committed by the Noticee in the Report.

In the light of the facts and circumstances of the case, as also the mitigating factors stated hereinabove, including the fact that considerable time has elapsed since the alleged violations, I am of the view that a suspension of the registration of the Noticee for a period of 1 year would commensurate with the violations committed by the Noticee.

11. I therefore, in exercise of the powers conferred upon me by virtue of Section 19 read with Section 12(3) of the SEBI Act and Regulation 13(4) of the SEBI Enquiry Regulations read with Regulation 38(2) of the Intermediaries Regulations, 2008, hereby suspend the registration of the Noticee, *viz.* Century Finvest Pvt. Ltd. (SEBI Registration No. INB 230930432), for a period of **1 year**.
12. This Order shall come into force immediately on the expiry of 21 days from the date of this Order.
13. A copy of this order shall be served upon the Noticee and the concerned stock exchanges and the depositories in accordance with Regulation 30 of the SEBI (Intermediaries) Regulations, 2008 for ensuring compliance of this Order.

Place: Mumbai  
Date: September 15, 2015

**S. RAMAN**  
**WHOLE TIME MEMBER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**