

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

DIRECTION UNDER SECTION 11(4) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AGAINST S. K. JAIN, MEMBER OF CALCUTTA STOCK EXCHANGE.

1. Shri Shubh Karan Jain, Trade name : S. K. Jain is the member of the Calcutta Stock Exchange Association Limited (hereinafter referred to as 'the said broker') and is registered with Securities and Exchange Board of India (hereinafter referred to as 'SEBI') as a stock broker with registration No.INB 030951610.
2. The said broker is a proprietary firm owned by Shri. S. K. Jain, who was also incidentally a Director of CRB Capital Markets Limited (CRB CML), a non banking finance company (NBFC), which had raised deposits from the public and defaulted thereafter. CRB CML was also registered with SEBI as a merchant banker and was the sponsor of CRB Mutual Fund (CRB MF). Various irregularities and illegalities had come to light in the operations of CRB CML and other CRB Group Companies. The RBI has filed a petition, being CP No. 191/97 under section 45 MC of the RBI Act for winding up of CRB CML before the Delhi High Court which is still pending. A provisional liquidator was appointed by the Court on 22.05.1997.
3. In this regard, SEBI also passed an order dated 21.05.1997 under section 11B read with section 11 of SEBI Act directing, inter alia, CRB Mutual Fund and CRB Asset Management Company not to launch any further schemes and not to deal with the securities or the fund of the scheme till further orders. Further, SEBI also directed CRB CML should not undertake any activities as a merchant banker till further orders.
4. An order dated 13.06.1997 was passed by the Hon'ble Delhi High Court and the same was modified on 23.06.1997 by the Hon'ble Delhi High Court in CA. No.737/97 in CP No.191/97, inter alia, restraining S. K. Jain and other Directors of the CRB Group Companies from disposing of the properties of the said companies.
5. SEBI issued a circular No.SMD/POLICY/CIR-15/97 dated July 01, 1997 inter alia restraining all broking firms belonging to CRB Capital Markets Limited and all of the CRB group companies, Directors/employees of CRB Capital Markets Limited or any of the CRB Group Companies, all such broking firms of the exchange where any of the Directors / employees of CRB Capital Markets or any of the CRB Group companies is a director / promoter / shareholder or proprietor / partner from transacting in securities market, and advising the exchanges not to release the deposits and / or any other type of deposits / assets held with the exchange and also not to transfer their membership cards.
6. Subsequently, the Hon'ble Delhi High Court passed an order dated 04.11.1997 in CA 1536/97, inter alia, directing that the accounts of the 133 companies / firms (list annexed to the order) would remain frozen to the extent of the amount mentioned against each of the said company / firms until further orders.
7. Subsequently, the Hon'ble Delhi High Court vide its order dated 07.09.2001 held that in view of the orders passed in CA 1536/97, the orders passed in CA 737/97 have become unnecessary and infructuous and consequently the Hon'ble Court vacated the orders dated 13.06.1997, 23.06.1997 and 29.07.1998 passed in CA 737/1997.
8. Since, the affairs of the CRB Group Companies had been conducted in a manner detrimental to the interest of investors, and proceedings were still pending against the various entities, it appeared that the said broker whose proprietor was a Director of CRB Capital Markets Limited was not considered to be a fit and proper person to act as a stock broker. Accordingly, SEBI vide its order dated 03.02.2003 appointed an Enquiry Officer to conduct an enquiry into the possible violation of Regulation 5(e) read with regulation 25(a) of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 alleged to have been committed by the said broker. In the proceedings u/s. 11(4) of the SEBI Act an order dated 3rd April 2003, was passed whereby the said broker was restrained from accessing the securities market and prohibited from buying, selling and dealing in securities till the completion of enquiry against him, since it was apprehended that the said broker would start dealing in securities which would be detrimental to the interest of investors and affect the integrity of the market.
9. Shri S. K. Jain, was given an opportunity of post decisional hearing on 15th May 2003. During the hearing, Shri Jain was unable to explain the basis on which he became the Vice Chairman of the CRB Capital Markets Ltd. He also pleaded that no court case was pending against him in respect of CRB Case. In view of the said submission, he was asked to furnish declaration in the form of an affidavit declaring that there is no enquiry / investigation / legal proceedings (civil / criminal) pending against him before any Court / Tribunal / Authority in connection with the financial irregularities and illegalities committed by CRB Capital Markets Ltd. and its group companies in the year 1997. He was also advised to issue a public notice in an all India widely circulated newspaper (multiple edition) stating that he had given a declaration to SEBI to that effect and that quoting the contents of the declaration and if any individual had any information to the contrary the same may be brought to the notice of SEBI within 30 days from the date of the public notice.
10. In reply to the same, Shri S. K. Jain vide his letter dated November 14, 2003 submitted:
11. That he was unable to give the declaration in the form of Affidavit as advised by SEBI as in the aftermath of CRB episode, various parties had lodged complaints and also filed a number of Civil and Criminal Cases including under Section 138 of Negotiable Instruments Act against CRB Capital Markets Ltd., and its erstwhile Directors. He stated that he was not fully aware of the exact status of various inquiries / investigations / legal proceedings (civil or criminal) pending before any Court / Tribunal / Authority, but could state however, with firm conviction that he did not have any involvement in the financial irregularities and illegalities committed by CRB Capital Markets Ltd., and its group companies.
12. It was submitted that he was a non-executive professional director of CRB Capital Markets Ltd. and had resigned from the Board of the said Company with effect from 1st March, 1997 and that during his tenure as Director on the Board of the said

Company, he was neither looking after nor was responsible for the day to day conduct of the business of the said Company. He further submitted that he was never authorized to operate any bank account of either CRB Capital Markets Ltd. or any of its Group Companies and except for receiving the sitting fee for attending Board Meetings of CRB Capital Markets Ltd., he did not receive any other remuneration from CRB Capital Markets Ltd. and / or any of its Group Companies. He stated that as a Professional he had rendered services to the profession in various capacities which had been recognized by various professional bodies and was no longer interested in carrying any share broking activity and hence would like to surrender his Membership of the Calcutta Stock Exchange Association Ltd.

13. Shri Jain stated that since the criteria of "fit and proper person" had been invoked against him after a lapse of Six years, it would amount to suspending his registration indefinitely which would be against the spirit of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992.
14. It was also stated that, in the order dated 03.04.2003 no stance of any irregularities attributable to him has been cited. The criteria of fit and proper person was not applied any time after 07.09.2001 i.e. the date when the Hon'ble Delhi High Court vacated its earlier Order dated 13.06.1997 till the passing of the Order dated 03.04.2003.
15. He submitted that the order dated 03.04.2003 under Section 11(4) (b) of SEBI Act had been passed against him without disclosing the status of the pending investigations as against various CRB entities. He also questioned as to whether the Order passed against him had been passed against any other entities and / or persons by SEBI.
16. Shri Jain stated that he was restrained from dealing in the securities market sometime in July 1997 as a sequel to the Order dated 13.06.1997 passed by the Hon'ble Delhi High Court in C.A No.737/97 in C.P. No. 191/97, as evidenced from the letter dated August 7, 1997.
17. Shri Jain stated that the said Order was passed by the Hon'ble Delhi High Court, ex-parte on the application filed by the Provisional Liquidator of CRB Capital Markets Ltd. The Hon'ble Delhi High Court inter-alia, restrained the Directors of 40 companies or any other Director or their authorized signatory etc. from disposing of the properties of these companies as well as their individual properties to forestall the recoveries of the amount deposited by the investors / depositors / creditors. However, the Hon'ble Delhi High Court was pleased to vacate the Order dated 13.06.1997 on 07.09.2001 and was further pleased to hold the said Order as infructuous.
18. After vacation of the order dated 07.09.2001, Shri Jain stated that he had requested CSE to allow him to resume his business as Member of CSE.
19. Shri Jain stated that there was no allegation against him whatsoever of any malpractice, irregularity or illegality in the Order dated 03.04.2003 except the unsubstantiated allegation of guilt by association.
20. Pursuant to the above, SEBI granted Shri Jain an opportunity of a hearing on December 30, 2003. Shri S. K. Jain appeared on the said date for the said hearing and reiterated his submissions made in his letter dated November 14, 2003.
21. I have carefully considered the facts and circumstances of the case as also the interim order dated 3rd April 2003 and the written submissions made by Shri S. K. Jain vide his letter dated 14th November 2003 and the oral submissions made by him at hearings held on 15th May 2003 and 30th December 2003. The short point for consideration is whether the order dated 3rd April 2003 is to be confirmed in the facts of the case during an enquiry which is pending against Shri S. K. Jain.
22. The contentions of S.K. Jain do not absolve him from the acts of commission / omission and responsibilities as a director of CRB Capital Market Ltd. during his tenure as a director i.e. prior to his resignation. Admittedly there have been instances of failure on the part of CRB in repayment of deposits to depositor and some other related matters which appear to be pending in the court.
23. The fact remain that there is a failure on the part of CRB in repayment of FDs to depositors. Cases in this regard are pending in various courts. Since Shri Jain was a director of CRB CML during the relevant period, SEBI thought it fit to initiate enquiry proceedings against Shri Jain to determine whether he is a fit and proper person to continue as a registered intermediary. The proceedings are still pending.
24. Although, Shri Jain is denying any role / involvement in the case of default of CRB CML, the fact remains that he was also appointed as the Director of CRB CML, which aspect cannot be ignored. I have noted that despite all his declarations of innocence, Shri Jain was unable to furnish the declaration to SEBI to the effect that there were no enquiry / investigation / legal proceedings (crime/criminal) pending against him before any court / tribunal / authority in connection with financial irregularation committed by CRB CML its group company in the year 1997.
25. Although, Shri Jain stated that no action should be initiated against him merely on the basis of his association with CRB CML, it is difficult to accept that having occupied an important role in the functioning of CRB CML., he was totally unaware of the mismanagement and its activities or affairs which involved thousands of investors.
26. In view of the above, and in exercise of the powers conferred upon me by Section 4(3) read with Section 11(4)(b) of SEBI Act 1992, I hereby confirm the Order dated 3rd April 2003 and direct that Shri S. K. Jain be restrained from accessing the securities market and prohibited from buying, selling and dealing in securities till the passing of final order by the Chairman / Whole Time Member in the enquiry proceedings pending against him. The Enquiry Officer is directed to expedite the enquiry proceedings.

G. N. BAJPAI.

CHAIRMAN

Date : May 5th, 2004.

Place : Mumbai.

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