

**SECURITIES AND EXCHANGE BOARD OF INDIA****CORAM: G. ANANTHARAMAN, WHOLE TIME MEMBER****ORDER AGAINST M/S J.G.A. SHAH SHARE BROKERS PVT. LTD., (FORMERLY KNOWN AS J. GIRDHARLAL AMULAKH SHAH), MEMBER, BOMBAY STOCK EXCHANGE LTD., UNDER REGULATION 13(4) OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002**

- 1.1 M/s J. G. A. Shah Share Brokers Pvt. Ltd., formerly known as J. Girdharlal Amulakh Shah (hereinafter referred to as the 'Broker'), member, Bombay Stock Exchange Ltd., (hereinafter referred to as 'BSE') is registered with Securities and Exchange Board of India (hereinafter referred to as 'SEBI') as a stock broker having Registration Number INB 010995237. SEBI, vide order dated March 26, 2003 appointed auditors M/s A. J. Shah & Co. (hereinafter referred to as the 'Inspecting Authority') to conduct inspection of books of accounts, documents and other records etc. of the Broker under the provisions of Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as the Broker Regulations). The period covered under the inspection was 2001 – 2002, 2002 – 2003 and April 2003 to May 15, 2003.
- 1.2 The Inspecting Authority observed certain deficiencies /irregularities such as non maintenance of order book, non maintenance of client database, unauthorized installation of terminals etc. The copy of the Inspection Report was forwarded to the Broker for its comments. Thereafter, SEBI vide order dated March 12, 2004 appointed an Enquiry Officer under the provisions of Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as the Enquiry Regulations) to enquire into the alleged deficiencies /irregularities committed by the Broker. The Enquiry Officer, after conducting the proceedings in terms of the provisions of the Enquiry Regulations, vide report dated August 16, 2004 recommended to suspend the certificate of registration of the Broker for a period of three months.
- 2.1 Pursuant to the submission of the Enquiry Report a notice dated August 24, 2004 was issued to the Broker asking it to show cause as to why an appropriate penalty including the penalty as recommended by the Enquiry Officer should not be imposed on it. The Broker vide letter dated September 10, 2004 requested SEBI to grant two weeks time to file the reply to the aforesaid show cause notice. A copy of the enquiry report was also forwarded to the Broker by SEBI. Thereafter, vide letter dated September 21, 2004, the Broker inter alia stated that the Enquiry Officer violated the principles of natural justice. In respect of the allegation of failure to indicate jurisdiction on the contract notes, the Broker added that the contract notes not only had the words "subject to Mumbai jurisdiction" but it was typed in bold. The Broker submitted that it had allotted a client code once the Know Your Client (KYC) form and other necessary arrangements were completed. The Broker stated that the issuance of the cheques by the client by itself was the proof of existence of the bank account. In respect of the annual income of the last three years of the client, the Broker claimed that it had exercised due caution by verifying the credit worthiness of the client and that it had entertained the clients only after its personal satisfaction. The Broker further added that the trading terminals were located at its premises and that it had executed leave and license agreement with the landlord of the premises where the terminals were located. The Broker contended that the terminals were operated by its own employees and were under their complete control. The Broker added that the said premises were shared by one of its clients. The Broker urged that it had just six employees and therefore it did not consider necessary to document the code of internal procedure and conduct. However, the Broker claimed that, it had framed the code of conduct as near to the Model Code specified in Schedule I specified in Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the Insider Trading Regulations), immediately after the inspection. In view of the above submissions, the Broker requested not to suspend the trading rights. The Broker also relied upon the orders of SEBI in various matters in respect of the quantum of penalty.
- 2.2 An opportunity for hearing was granted to the Broker on November 28, 2006. Shri Siddharth Shah and Jasvantlal Shah, Directors of the Broker appeared and made submissions before me on the lines of the aforesaid reply of the Broker. The Broker was inter alia advised to submit the proof of installation of 16 trading terminals in February 2001 and the subsequent withdrawal of 15 trading terminals in the month of July 2001. The Broker vide letter dated December 6, 2006 inter alia submitted the copy of the leave and license agreement (tripartite) entered into between the Broker, M/s Peculiar Metals Pvt. Ltd. and Rockway Equities Pvt. Ltd., copy of the letter dated July 28, 2000 from M/s Peculiar Metals Pvt. Ltd., copy of the letter dated July 25, 2000 from Ashok Chamber Tenant Association etc. The Broker further stated that the trading terminals were in exclusive possession of its office at Masjid Bunder and that all the trading terminals installed at the said office were cancelled on or before July 25, 2001. According to the Broker, the sole terminal remained at the time of inspection was controlled and operated by its own employee. In view of the above submissions, the Broker requested to take a lenient view in the matter.

2.3 I have considered the Enquiry Report, the show cause notice issued to the Broker, its oral as well as written reply and other materials available on record. I note that the Enquiry Officer observed that there were discrepancies in the client registration form such as non mentioning of annual income for the last three years, non obtaining of Bankers certificate for proof of account number etc. The contention of the Broker was that it had verified the copy of the cheques on the lines of SEBI circular dated August 26, 2004. It added that mentioning of annual income in the KYC form was not mandatory. In this regard, I note that SEBI, vide circular dated February 11, 1997 inter alia advised the stock brokers to maintain a database of their clients. Subsequently, vide circular dated April 11, 1997, it had once again advised the stock brokers to follow its earlier circular dated February 11, 1997. In its circular dated April 11, 1997, SEBI had further advised that the stock brokers might seek additional information, if any, so as to satisfy themselves about the antecedents of clients and that it would be the responsibility of the stock brokers to provide for client details as and when need arises. The circular dated April 11, 1997 specifically required a letter from the banker certifying account number and the period from which the account is being operated. The Broker failed to comply with the said provisions. It is one of the precautionary measures of a stock broker to verify the financial capacity of his clients before executing the trades on their behalf, which is one of the checks under the Know Your Client norms/guidelines. When a stock broker fails to perform the said primary requirement and further, if he happens to be transacting on behalf of such clients without knowing their antecedents and financial capacity, he is putting the entire system in jeopardy. Therefore, the contention of the Broker is not just acceptable, as the Broker has got a duty to ensure that his clients were capable of fulfilling the payment obligations for the trades which were executed on their behalf. The assessment of financial capacity of the client can not be taken as irrelevant. The Broker could not establish that it had assessed the financial network of its clients before executing trades on behalf of its clients. I further note that the irregularities observed was for the years 2000-2003 and hence, the Broker can not take shelter under the subsequent circular issued after the period of inspection especially when there existed a specific circular on the subject at the time of violation. The Broker had to comply with all the statutory requirements which were in force during the period covered under inspection. It is also unable to accept the contention that the mentioning of annual income in the KYC form was not mandatory. The form prescribed under the SEBI circular dated April 11, 1997 stipulates the details to be entered in such form and one of the details to be specified therein is 'annual income in last three years'. It could not be said that the said requirement is not mandatory. Therefore, I am unable to accept the contention of the Broker in this regard and it is fairly established that the Broker had violated the circulars dated February 11, 1997 and April 11, 1997.

2.4 In the present case, the Broker stated that the trading terminals were located at a place which was shared by the Broker with one of its clients i.e. M/s Rockway Equities Pvt. Ltd. The Broker contended that there was a leave and license agreement executed by it, with the owner of the premises (M/s Peculiar Metals Pvt. Ltd.) and the aforesaid client to use the premises for its official purpose. The Broker also filed the copies of letters dated June 26, 2001 and July 25, 2001 addressed to BSE requesting it to withdraw the trading terminals installed at the aforesaid premises. However, I note that the said premises was admittedly shared by one of its clients. It was observed during the course of inspection that the client of the Broker, Rockway Equities Pvt. Ltd. entered different codes as per its convenience, whereas the Broker had entered a single client code on the contract note. Thus, there was mis utilization of the trading terminal by the aforesaid client. SEBI vide circular dated October 22, 2001 issued a directive against the mis utilization of the trading terminals. The acts of the Broker in allowing its clients to mis-utilize its trading terminal were in violation of the SEBI circular dated October 22, 2001. Further, the inspection report also mentioned that the client at whose place 16 trading terminals were located entered different codes as per its convenience, whereas the Broker had entered a single client code on the contract note. This would establish that the Broker had violated the SEBI circulars dated August 5, 1996 and March 31, 1997.

2.5 In respect of the allegation of non framing of the code for prevention of insider trading, the Broker contended that the provisions of Regulation 12 of Insider Trading Regulations are followed in letter and spirit. According to the Broker, Regulation 13 of the Insider Trading Regulations is not applicable in the present case. It also contended that it had only 6 employees during the time of inspection. As per Regulation 12 of the Insider Trading Regulations all the listed companies and organizations associated with the securities market including the intermediaries as mentioned in section 12 of the Securities and Exchange Board of India Act are required to frame a code of internal procedures and conduct. Admittedly, the Broker had not framed such a code as required therein. The submission that it had only 6 employees and therefore no formal document was prepared is not acceptable. Therefore, it is fairly established that the Broker had violated Regulation 12 of the Insider Trading Regulations. The Broker further stated that, subsequently it had documented the code of conduct for the aforesaid purpose.

3.1 Thus, it is reasonably established that the Broker had violated the provisions of the Act read with the provisions of the Broker Regulations and the SEBI Circulars, as specified. As an intermediary operating in the securities market, the Broker is

duty bound to comply with the statutory provisions including various circulars issued by SEBI from time to time. He has a duty towards the securities market. The various requirements under the Act and Regulations in respect of an intermediary are conceived in the interests of investor protection and further to ensure that the business and conduct of the intermediaries are undertaken on the basis of sound business principle. An intermediary is inter alia required to maintain high standards of promptitude and fairness while conducting his business. Taking into account the circumstances of the present case, the non compliance of statutory requirements on the part of the Broker calls for a penalty as ordered hereinunder.

- 4.1 In view of the foregoing, I, in exercise of the powers conferred vide regulation 13(4) of Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, hereby impose a minor penalty of censure on M/s J. G. A. Shah Share Brokers Pvt. Ltd., (formerly known as J. Girdharlal Amulakh Shah) Member, Bombay Stock Exchange Ltd. (Registration number INB 010995237).

**G. ANANTHARAMAN**  
**WHOLE TIME MEMBER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**

**Place: Mumbai**

**Date: February 26, 2008**