

SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: DR. K. M ABRAHAM, WHOLE TIME MEMBER

ORDER UNDER REGULATION 28(2) OF SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008 AGAINST M/S. MAYANK GOEL, MEMBER, UTTAR PRADESH STOCK EXCHANGE ASSOCIATION LIMITED.

1. Securities and Exchange Board of India (hereinafter referred to as SEBI), on September 13, 2002 appointed J.N. Sharma & Co., Chartered Accountants (for short, the inspecting authority) in terms of the provisions of Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as the Broker Regulations) to conduct an inspection of the books of accounts and other records of M/s. Mayank Goel (for short, the Broker), Member, Uttar Pradesh Stock Exchange Association Ltd. (hereinafter referred to as UPSE) for the period April 1, 2000 to September 30, 2002 (hereinafter referred to as the relevant period). The inspecting authority observed various irregularities / deficiencies. SEBI vide letter dated June 16, 2003 forwarded the copy of the aforesaid inspection report and advised the Broker to offer his explanation in respect of the irregularities / deficiencies observed by the inspecting authority. In response to the said letter, the Broker made his submissions vide letter dated August 13, 2003.

2. Thereafter, SEBI, appointed an Enquiry Officer under the then existing 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 irregularities/ deficiencies committed by the Broker during the relevant period.

As the Broker failed to appear before the Enquiry Officer, despite sufficient opportunities, the Enquiry Officer proceeded with the matter on the basis of the available materials on record including the reply of the Broker dated August 13, 2003, filed in respect of the observations made in the inspection report. Thereafter, the Enquiry Officer, vide report dated November 9, 2004 recommended to impose a penalty of suspension of the certificate of registration of the Broker for a period of one year. Pursuant to the Enquiry Report, a notice dated February 9, 2005 was issued to the Broker, by SEBI in terms of the Enquiry Regulations calling upon him to show cause as to why appropriate penalty including the penalty as recommended by the Enquiry Officer should not be imposed on it. A copy of the Enquiry Report was also forwarded to the Broker with the said show cause notice. The Broker vide letter dated February 24, 2005 *inter alia* stated that the Enquiry Officer failed to consider his reply in the light of attending circumstances. He also stated that the recommendation of the Enquiry Officer, if imposed, would cause irreparable loss to him as well as his business.

3. SEBI granted an opportunity of hearing to the Broker on July 26, 2006 and the said hearing was adjourned as per the request made by the Broker vide letter dated July 22, 2006. Thereafter, the Broker was given a further opportunity on September 25, 2008. However, on September 24, 2008, SEBI received a letter dated September 22, 2008 from the Broker *inter alia* stating that he had already closed his share trading activities from the financial year 2004-05. He claimed that he had resigned from the membership right of UPSE and that he had surrendered the SEBI certificate of registration on March 17, 2006 through UPSE. According to him, the said surrender was not accepted by SEBI due to the present proceedings. The Broker further requested to condone his lapses and not to mete out the penalty recommended by the Enquiry Officer and to treat the said letter as his personal submission.

4. I have carefully considered the Enquiry Report, the show cause notice issued to the Broker, letters of the Broker dated February 24, 2005 and September 22, 2008 and other materials available on record. I note that the enquiry and the subsequent show cause notice was conducted/ issued under the provisions of the Enquiry Regulations. Though, the Enquiry Regulation was repealed with effect from the notification of Securities and Exchange Board of India (Intermediaries) Regulations, 2008, anything done and any action taken under the said Enquiry Regulations shall be deemed to have been done or taken or commenced under the corresponding provisions of Securities and Exchange Board of India (Intermediaries) Regulations, 2008.

5. One of the observations made by the inspecting authority was that the Broker had not produced certain books and other records for inspection. Some of such books and records were complete sub-ledgers for the period from April 1, 2002, demat account statement as on March 31, 2002, bank balance confirmations and reconciliations etc. I note that the Broker in his letter dated August 13, 2003 *inter alia* stated that he had submitted complete sub-ledgers for the period from April 1, 2000 to September 30, 2002, to the inspecting authority. Though the Broker submitted so, the Enquiry Officer disagreed with his contentions and observed that, he had violated the provisions of Regulation 21 of the Broker Regulations. In terms of Regulation 21 of the Broker Regulations, it is the duty of every stock broker to produce to the inspecting authority such books, accounts and other documents and other information relating to the transaction in securities market within such time as may require. If the Broker had actually submitted the required documents before the inspecting authority, he could have produced a copy of the same before me, to prove his bonafides. However, he failed to do so. In his reply he merely stated that the Enquiry Officer failed to consider his reply in the light of the attendant

circumstances and prevalent market practices of UPSE. As the Broker failed to convince me in respect of his contention that he had produced the documents before the inspecting authority, I am unable to disagree with the findings of the Enquiry Officer and it is fairly established that the Broker had violated Regulation 21 of the Broker Regulations.

6. Besides it was also alleged that the Broker had failed to maintain the order book showing the particulars of orders received from his clients. It was observed by the inspecting authority that there was no record kept by the Broker to indicate *inter alia* the date and time of the receipt of the order and its other details. Further, in some cases it was also observed that the Broker had failed to execute the time of execution of the order. I note that, as per SEBI circular dated February 11, 1997, the stock brokers are required to maintain record of the time of order placement (by the client) and to mention the same in the contract notes. By not maintaining the proper record to indicate the date and time of the order placement, the Broker had violated the SEBI circular dated February 11, 1997. Besides, the inspecting authority also observed that the contract notes were not serially numbered and that it did not bear the signature of the Broker. The inspection report also observed that, though the Broker had acted as principal in some cases, he had issued contract notes in Form A instead of Form B. I note that, SEBI, vide circular dated August 05, 1996 *inter alia* advised that serious view would be taken in case a stock broker is found to be responsible for certain deficiencies such as contract notes without pre-printed serial numbers, not issuing contracts in Form B while acting as principal etc. In the present matter, the inspecting authority observed various deficiencies committed by the Broker during the relevant period in respect of the contract notes. Some of the deficiencies are contract notes without serial numbers, issued contract notes in Form A instead of Form B while the Broker acted as a

principal in some cases, unsigned contract notes. Though, such deficiencies are elaborately mentioned in the Enquiry Report, the Broker failed to give any satisfactory explanation in this regard. Thus, it is established that the Broker had violated SEBI circular dated August 5, 1996.

7. As per the inspection report, the Broker failed to segregate his own scrips from those belong to the clients. It was also observed that, even in the stock register there was no indication available as to whether the scrips belonged to the Broker or to the clients. In this context, I note that SEBI, vide circular dated November 18, 1993 made it compulsory that the stock brokers shall keep separate accounts for client's securities and to keep such books of accounts, as may be necessary, to distinguish such securities from his / their securities. SEBI further, vide circular dated February 1, 2001, advised that the securities lying in the pool account beyond the aforesaid period *inter alia* would not be eligible for delivery in the subsequent settlements until the same was credited to the beneficiary accounts. The Broker has a duty to comply with all necessary guidelines / circulars issued by SEBI. Besides, the contention of the Broker (as per letter dated August 13, 2003) that the clients at their will used to give their securities in the demat account of the Broker towards the margin, cannot be accepted. Thus, the Broker had violated SEBI circulars dated November 18, 1993 and February 1, 2001.

8. Further, the Broker had violated the SEBI circular dated November 18, 1993 by delaying the payments as required there under. I note that the inspecting authority in its report had furnished a list of 41 instances where there has been a delay in making payments. There were cash payments made by the Broker in some cases. The inspecting authority observed that the Broker maintained running accounts. In such case he should have obtained written authority from his clients in respect of the delay for more than two days. Thus,

the Broker violated SEBI circular dated November 18, 1993. Admittedly, the Broker had *inter alia* not allotted unique client code to his clients. He had also failed to appoint a compliance officer. In terms of SEBI circular dated July 18, 2001, it is mandatory for all stock brokers to use unique client codes for all clients. Thus, the Broker had violated the said circular. In addition to the above violations, the inspecting authority also found that the Broker had utilized the money received from one client for the purpose of payment to other client. Further, the client's funds had also been utilized by the Broker for own purposes. The said activities of the Broker are in violation of SEBI circular dated November 18, 1993. I note that the inspecting authority in its report observed that the Broker had been penalized by UPSE for his involvement in Badla transactions. Further, there were certain transactions appeared to be in the nature of carry forward transactions.

9. Thus, it is established that the Broker had violated the provisions of the Broker Regulations and various SEBI circulars, as mentioned above. An intermediary operating in the securities market is duty bound to comply with the statutory provisions including various circulars issued by SEBI from time to time. He has a duty not only towards the securities market but also to the investors in general. The requirements specified by SEBI in respect of an intermediary are conceived *inter alia* in the interests of investor protection and further to ensure that the business and conduct of the intermediaries are undertaken to reach such objective. An intermediary is *inter alia* required to maintain high standards of promptitude while conducting his business. Therefore, I agree with the findings of the Enquiry Officer.

10. I note that the Broker vide letter dated September 22, 2008 informed that he had stopped share trading activities from the financial year 2004-05 and that he surrendered SEBI certificate of registration through UPSE. He further contended that, the said surrender was not accepted by SEBI due to the

present proceedings. Though the Broker *inter alia* violated various circulars of SEBI, in the facts and circumstances of the present case and considering the materials available on record including the letter of the Broker dated September 22, 2008, I do not consider it necessary to impose the penalty as recommended by the Enquiry Officer. Accordingly, I dispose of the present proceedings as ordered herein under.

11. In view of the foregoing, I, in exercise of the powers conferred on me in terms of Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 28(2) of Securities and Exchange Board of India (Intermediaries) Regulations, 2008, hereby warn M/s. Mayank Goel, Member, Uttar Pradesh Stock Exchange Association Ltd. (Registration No. INB100949118) to avoid such lapses and irregularities while dealing in securities market.

K. M. ABRAHAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Place: Mumbai

Date: October 22, 2008