

BEFORE THE 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 IN THE MATTER OF APOORVA SECURITIES PRIVATE LIMITED, MEMBER, UTTAR PRADESH STOCK EXCHANGE ASSOCIATION LIMITED AND SUB BROKER AFFILIATED TO UPSE SECURITIES LIMITED.

1. Apoorva Securities Private Limited (Member, Uttar Pradesh Stock Exchange Association Limited) is registered with Securities and Exchange Board of India (for short SEBI) as a stock broker and also as a sub-broker (affiliated to the stock broker, UPSE Securities Limited). Apoorva Securities Private Limited is hereinafter referred to as the Broker for the sake of brevity. SEBI conducted an inspection of the books of accounts and records of the Broker on March 21, 2005 to March 23, 2005 in respect of its stock broking and sub broking activities for the financial years 2002-03, 2003-04, 2004-05 (hereinafter referred to as the relevant period). The inspection thus carried out, observed certain deficiencies/irregularities committed by the Broker, in its functioning during the relevant period. Though, SEBI forwarded the findings of the said inspection to the Broker for its comments on the said findings, it had failed to do so, as advised by SEBI. Thereafter, SEBI vide order dated March 16, 2006 read with a subsequent order dated November 19, 2007 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 Enquiry Regulations) to enquire into the alleged violations committed by the Broker *inter alia* of the provisions of Securities and

Exchange Board of India Act, 1992 (Act), Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations 1992 (hereinafter referred to as Broker Regulations), Securities Contracts (Regulation) Act, 1956, Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 and various circulars of SEBI, as stated therein.

2. The Enquiry Officer, vide report dated July 23, 2008, recommended imposition of a penalty of suspension of the certificate of registration of the Broker (including sub broker certificate) for a period of six months. Pursuant to the Enquiry Report, a notice dated August 29, 2008 was issued by SEBI to the Broker calling upon it to show cause as to why the appropriate penalty including the penalty as recommended by the Enquiry Officer should not be imposed on it. The Broker, vide letter dated September 11, 2008 *inter alia* stated that, it had intentionally not violated any of the provisions of SEBI Regulations. According to the Broker, the lapses had occurred due to its lack of legal knowledge and understanding. The Broker further pleaded that the recommended penalty is excessive and requested for awarding a minor penalty. SEBI granted an opportunity of hearing to the Broker on October 16, 2008. However, the Broker vide letter dated October 7, 2008 informed SEBI that, it had already made its submissions vide letter dated September 11, 2008 and that it had nothing more to say in its defence in the matter. The Broker while undertaking to be careful in discharging its functions in future reiterated its request for awarding a minor penalty instead of the recommended penalty.

3. I have considered the Enquiry Report, show cause notice issued to the Broker, the letters dated September 11, 2008 and October 7, 2008 of the Broker and other materials available on record. The Enquiry Regulations, though, were 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. In view of the above, I proceed with the matter on the basis of the aforesaid available materials on record. The Enquiry Officer in his report dated July 23, 2008 has observed various violations committed by the Broker *inter alia* with respect to the client registration forms and member client agreements. It was observed that the 'Know Your Client (KYC)' forms were not signed by any authorized person and that the KYC forms were not filled up properly in most of the cases. Besides, the Broker had also failed to obtain Permanent Account Number proof, residence proof etc in respect of its clients. I also note that the Broker had not entered into the member-client agreements. In terms of SEBI circular dated February 11, 1997, stock brokers are required to maintain a database of their clients in order to comply with the concept of 'Know Your Client' norms. Thereafter, vide circular dated April 11, 1997, SEBI had once again advised the stock brokers to implement its earlier circular dated February 11, 1997. SEBI, in the said circular (dated April 11, 1997) also advised that the stock brokers might seek additional information, if any, so as to convince themselves about the antecedents of its clients. Thus, it is the responsibility of the stock brokers to provide for client details as and when the need arise. Admittedly, in the present case, the Broker had failed to comply with such norms, as required under the said circulars of SEBI. Therefore, it is established that the Broker violated the provisions of SEBI Circulars dated February 11, 1997 and April 11, 1997, Rule 4(b) of then existed Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Rules 1992 and clause D (1) of the Code of Conduct for stock brokers as specified under schedule II read with Regulation 7 of Broker Regulations. As the Broker violated various provisions of circulars and the Act, it has

also violated clause A (5) of the Code of Conduct for stock brokers as specified under schedule II of the Broker Regulations. Besides, admittedly, the Broker had failed to maintain client database, as required under SEBI Circulars dated February 11, 1997 and September 29, 2003.

4. The Broker also admitted the fact that it had failed to maintain proper books of accounts and records such as margin deposit book, order book, bank book and bank statements and record for clients' securities in respect of financial years 2002-03 and 2003-04. The non maintenance of such books of accounts and records are in violation of the provisions of Regulation 17(1) of the Broker Regulations. As the Broker is also registered with SEBI as a sub broker, such non-compliances are as well in violation of provisions of Regulation 15 (2) of the Broker Regulations. Admittedly, the Broker had also dealt as an unregistered sub broker in violation of provisions of Section 12 (1) of the Act read with SEBI circulars dated January 16, 1998 and January 15, 2001. I note that, SEBI vide circular dated January 16, 1998, advised the members of a stock exchange, acting as sub brokers to the members of other exchanges, to obtain certificate of registration from SEBI before starting their activities as a sub broker. Subsequently, vide circular dated January 15, 2001, SEBI further stated that the sub broker (as mentioned above) could not commence its activities without obtaining the certificate of registration. During the inspection, it was observed that the Broker had dealt with various stock brokers of National Stock Exchange of India Limited (NSE) and Bombay Stock Exchange Limited (BSE). The said facts are not in dispute. Further, a perusal of client ledgers indicate that the Broker acted as a sub broker for clients namely, M/s. Universal Securities, M/s. Rohtagi Shah Securities and M/s. Subhash Bahti & Company and the trades were executed through various stock brokers of NSE and BSE, during the relevant period. Admittedly, the Broker did not obtain certificate of registration as a sub broker of such members of NSE and BSE through

whom it had made the trades for its clients. Thus, it is established that the Broker violated the provisions of Section 12(1) of the Act read with the then existed Rule 3 of Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Rules 1992 and provisions of circulars of SEBI dated January 16, 1998 and January 15, 2001,

5. The Broker had entered into off market transactions with various clients without providing its details to UPSE. As per SEBI circular dated January 13, 2004, *"A stock broker/sub-broker of an exchange cannot deal with brokers/sub-brokers of the same exchange either for proprietary trading or for trading on behalf of clients, except with the prior permission of the exchange. The stock exchanges while giving such permission, shall consider the reasons stated by the brokers/sub-brokers for dealing with brokers/sub brokers of the same exchange and after carrying out due diligence allow such brokers/sub-brokers to deal with only one stock broker/sub broker of the same exchange."* Even prior to the said circular, SEBI vide Circular dated January 16, 1998 had prohibited stock brokers from dealing with the stock brokers of the same exchange on principal to principal basis without informing the stock exchange. In the present case, the Broker had not taken prior approval of UPSE in respect of the off market transactions executed by him. I note that, the following off market transactions of the Broker were not reported to UPSE:

- i. Purchase transaction of 25,000 shares of Aftek on April 05, 2004.
- ii. Sale transaction of 25,300 shares of Shyam tele on April 30, 2004.

Besides, some of the off market transactions of the Broker were reported late to UPSE. The details of some of such off market transactions are stated below:

Buyer	Seller	Scrip	Qty. (nos)	Rate (Rs.)	Amt. (Rs.)	Trans. Date	Report to UPSE on
ASPL	Samridhi Share	Tisco	1500	362.00	543000	30.4.04	4.5.04
ASPL	Samridhi Share	Tisco	200	362.50	72500	30.4.04	4.5.04
ASPL	Samridhi Share	RIL	4330	532.80	2307024	30.4.04	4.5.04
ASPL	Samridhi Share	RIL	1520	534.50	812440	30.4.04	4.5.04
Samridhi	ASPL	Shyam Tele	25300	62.50	1581250	30.4.04	4.5.04
Samridhi	ASPL	Aftek Info	41500	78.50	3257750	30.4.04	4.5.04

Thus, it is established that the Broker violated the provisions of SEBI Circular dated January 16,1998 and January 13, 2004.

6. I note that, in terms of SEBI circular dated November 18, 1993, a stock broker should not accept cash for purchases of securities and/or give cash against the sale of securities. Further, in terms of the circular of SEBI dated August 27, 2003, the stock brokers and sub brokers are prohibited from accepting cash from the clients against their financial obligations. However, in the present case, it has been observed that the Broker had cash dealings with its clients in violation of SEBI circulars dated November 18, 1993 and August 27, 2003. In addition to the above violations, the Broker had also not made disclosures of proprietary trading to the clients, as required under SEBI circular dated November 19, 2003. Besides, the inspection conducted by SEBI observed certain discrepancies in respect of the contract notes as detailed as under:

- The acknowledgement from the clients was not dated or was missing.
- The contract notes were not issued to the clients within 24 hours of the execution of trade.
- The delivery register (for dispatching contract notes) was not maintained.
- The name of the authorized signatory was not printed on the contract note.

The Broker had also issued contract notes on principal to principal basis in Form A instead of Form B. I note that, SEBI, vide circular dated August 05, 1996 *inter alia* advised that stern view would be taken in case a stock broker was 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 in respect of the contract notes, committed by the Broker. Some of the specific violations in respect of the contract notes were explained in detail in the Enquiry Report. The Broker failed to refute the findings of the Enquiry Officer, instead it admitted the violations. Thus, it is established that the Broker violated the provisions of SEBI circular dated August 5, 1996 and Para B(6) of Code of Conduct for Stock Brokers specified under Schedule II with Regulation 7 of Broker Regulations. I note from the demat statements of the clients of the Broker (including that of the Broker) that, whenever the clients purchased shares of a company, the Broker used to deliver the shares (if it had stock of those shares) from its own account and the balance shares were delivered by purchasing from the stock market.

7. I note that SEBI, vide circular dated September 30, 2003, *inter alia* advised the Stock Exchanges to inform their members to obtain a copy of the disclosure document duly signed by their clients. In the present case, the Broker could not produce any confirmation to show that its clients were made aware with regard to the risk associated with the dealings in the securities market. The Broker admitted the said violation and therefore, it is established that it committed the violation of SEBI circular dated September 30, 2003. Further, the Broker also violated the provisions of SEBI circulars dated November 18, 1993 and February 1, 2001, by not making the payments and delivery of securities within two working days of the pay out. In terms of the said circulars, *inter alia*, the payment of funds on delivery of securities has to be made within two

working days of the pay out unless the client has requested otherwise. In terms of the said circulars, there should be clear cut segregation between the funds and securities of the clients' and that of the Broker. The Broker was also found to have involved in various fund based transactions. It had received Rs.7.98 lakh from one M/s Money Makers during 2003-2004, which was returned during the same financial year. In terms of the inspection, the balance sheet of the Broker showed that an amount of Rs. 29,46,214.92/- was outstanding for more than 2 years in the name of one Madan Shammi Bhasin. The Broker submitted before the Enquiry Officer that the said person is the sister of Mr. Sunil Kumar, its Director. In addition to the above, the inspecting authority had also observed number of instances wherein the Broker had accepted money, in a similar manner. The said act of the Broker indicates the acceptance of deposits by the Broker which tantamount to fund based activities not incidental to securities market business. It is therefore, established that the Broker has violated Clause A (2) of Code of Conduct for Stock Brokers specified under Schedule II read with Regulation 7 of the Brokers Regulations.

8. Admittedly, the Broker also violated the provisions of SEBI circular dated August 21, 2003 by failing to provide any details of submission of authorized software to UPSE. The Broker also failed to frame the Code of internal procedure for Prevention of Insider Trading as required under Regulation 12(1) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992. Admittedly, the Broker failed to maintain a dividend payable account which is required for segregation of dividend due to the clients, and thus violated Clause A(2) of Code of Conduct for Stock Brokers specified under Schedule II read with Regulation 7 of the Broker Regulations. The allegation regarding its failure to follow the system of unique client codes for its clients has also been established and admitted by the Broker.

9. In the present matter, I note that the Broker was earlier involved in the illegal and unauthorized carry forward transactions in securities, in the year 2001, in violation of SEBI circular dated June 21, 2001. In view of the above violation, SEBI, vide order dated February 18, 2005 directed UPSE to suspend various stock brokers, including the Broker, for a period of one year. Thus, violations observed in the present proceedings are not an isolated one. Being an intermediary operating in the securities market, it is the duty of the Broker to comply with the statutory provisions including various circulars issued by SEBI from time to time. The Broker 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 put in place *inter alia* in the interests of investors in securities market and further to ensure that the activities of the intermediaries are undertaken to reach such an objective. An intermediary is *inter alia* required to maintain high standards of promptitude while conducting his business. The Broker was also penalized by SEBI for certain violations, as stated above. The Broker failed to give any satisfactory explanation. On the other hand, the Broker vide letter dated October 7, 2008 stated *"In our letter of submissions referred to above we have prayed for a minor penalty than suspension of our Certificate of Registration for a period of 6 months which according to us is excessive and too harsh for the mistakes that we have committed in the discharge of our functions. You will kindly appreciate that mistakes committed by us are neither intentional nor due to any negligence on our part. At best these mistakes can be attributed to our lack of understanding of the legal provisions of SEBI Act and rules framed thereunder"*. The contention of lack of legal knowledge lacks credibility and is not expected of a registered intermediary which deals with the investors in general, in its day to day functioning. The violations/deficiencies/discrepancies committed by the Broker cannot be treated to be trivial in the facts and circumstances. Further, I note that Mr. Sunil Kumar Malhotra (Director of the Broker) stated before the Enquiry

Officer (on May 6, 2008) , *“the requirements stipulated by SEBI for a stock broker is too complex for the brokers in UPSE to understand and ensure compliance....”* As an intermediary registered with SEBI, the Broker is duty bound to comply with Rules, Regulations, Circulars, Instructions etc issued *inter alia* by SEBI from time to time. It is important that the intermediaries functioning in the securities market should be skilled, knowledgeable and familiar with all applicable Rules/ Regulations/ Guidelines etc. The quality of service to the investors/clients would be determined by the amount of professionalism acquired by the market intermediary. I find that the Broker had failed to comply with certain requirements such as proper recording of certain matters in the contract notes, not reporting the off market transaction etc. as discussed in detail above. These failures are not that trivial to be condoned.

10. Thus, I find that the Broker is guilty of violating the provisions of Securities and Exchange Board of India Act, 1992, Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations 1992, Securities and Exchange Board of India (Prohibition of Insider Trading), 1992 read with various circulars issued by SEBI, as specified in detail in this order. The Broker failed to controvert the findings of the Enquiry Officer and has admitted the violations. Taking into account the circumstances of the present case including the submissions made by the Broker vide letters dated September 11, 2008 and October 7, 2008 requesting for awarding a minor penalty instead of the recommendation of the Enquiry Officer. In view of the above, I dispose of the present enquiry 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 suspend the certificate of

registration of the stock broker namely, Apoorva Securities Private Limited (No.INB101022631), Member, Uttar Pradesh Stock Exchange Association Limited and sub broker (No. INS010727837) affiliated to UPSE Securities Ltd. for a period of two months.

12. This order shall come into force immediately on expiry of three weeks from the date of this order.

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

Place: New Delhi (Camp Office)

Date: November 7, 2008