

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 MR. SANJIV K. SHAH (TRADE NAME: AAKASH INVESTMENT CONSULTANCY), SUB BROKER (REGISTRATION NO.INS230489812 AND INS231334819)

Date of Hearing: September 26, 2008

Appearance:

For the sub broker: Mr. Sanjiv. K Shah.

For Securities and Exchange Board of India: Mr. Suresh B Menon, General Manager.

Mr. Vijayakrishnan G, Asst. Legal Advisor.

Mr. Laxman Datt Swami, Manager

1. Mr. Sanjiv K. Shah is registered with Securities and Exchange Board of India (hereinafter referred to as SEBI) as a sub broker (trade name : M/s. Aakash Investment Consultancy) affiliated through M/s. Growth Avenue Ltd., Member, National Stock Exchange of India Ltd. (NSE). Mr. Sanjiv K. Shah is hereinafter referred to as the sub broker. On the basis of analysis of the trading pattern and volume of business of M/s. Growth Avenue Ltd. (for short stock broker), NSE had *inter alia* suggested SEBI to conduct an inspection of books of accounts, documents and other records of the sub broker. Accordingly, SEBI (along with the officials of NSE) conducted an inspection of the books of accounts and other records of the sub broker on October 25, 2004 to October 29, 2004 for the period April 01, 2002 to October 10, 2004. The said inspection

observed certain shortcomings in the activities of the sub broker such as, acting as a sub broker without certificate of registration, execution of trades on behalf of the clients in the proprietary code of the sub broker etc. Though, the copy of the said inspection report was forwarded to the sub broker, he had failed to give its comments in respect of the irregularities observed therein. Thereafter, SEBI appointed an Enquiry Officer vide order dated May 2, 2006 under the provisions of Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (since repealed) against the sub broker to enquire into the alleged contravention of the provisions of Securities and Exchange Board of India Act, 1992 (Act), Securities and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 (Broker Regulations) etc.

2. The Enquiry Officer, vide report dated November 19, 2007 recommended the imposition of the suspension of the certificate of registration of the sub broker for a period of three months. Thereafter, a notice dated November 21, 2007 was issued by SEBI to the sub broker asking him to show cause as to why the appropriate penalty including the penalty as recommended by the Enquiry Officer should not be imposed on him. The sub broker was further advised to file his reply to the show cause notice together with the documents within fifteen days of the receipt of the aforesaid notice. As he failed to do so, SEBI, vide letters dated April 11, 2008 and May 23, 2008 granted further opportunity to file its reply, if any. Thereafter, the sub broker, vide letter dated June 11, 2008 stated that he stopped doing any transaction for the last four years and that at present, he has no relation with the stock broker, namely, M/s. Growth Avenue Ltd. He further accepted the penalty of suspension. Subsequently, an opportunity of hearing was also granted to the sub broker on September 26, 2008. Mr. Sanjiv K. Shah appeared before me and made submissions on the lines of his letter dated June 11, 2008.

3. I have considered the Enquiry Report, show cause notice issued to the sub broker, the oral as well as written submissions made by him and other materials available on record. Though, Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer And Imposing Penalty) Regulations, 2002 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. One of the charges leveled against the sub broker is that he had dealt in securities as a sub broker without holding a certificate of registration from SEBI. From the available materials on records, I note that the sub broker, vide letters dated January 11, 2005 and January 12, 2005, stated that he had started trading activities as a sub broker under the trade name AIC from January 1, 1996. However, as a matter of fact, SEBI granted certificates of registration to the sub broker (to act as a sub broker) only on April 22, 1999 and May 29, 2002. Further, the sub broker, in his statement specifically stated that he had shared brokerage with a sub broker namely, Net Gain and that he actually acted as a sub broker while delaing with the said Net Gain. In terms of Section 12(1) of the Act, *inter alia* no sub broker shall buy, sell or deal in securities except under, and in accordance with the conditions of a certificate of registration obtained from SEBI. This mandatory requirement was also specified in Rule 3 of Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Rules, 1992 (since rescinded with effect from September 7, 2006). Though the said Rules were rescinded, the provisions of the said Rules have been incorporated simultaneously under the Broker Regulations. Admittedly, the sub broker had executed trades as a sub broker even prior to the grant of certificate of registration and the said activities are in violation of Section 12(1) of the Act read with the provisions of the Rules and the Broker Regulations, as

stated above. Further, the Enquiry Officer also observed that the sub broker violated the provisions of SEBI Circular dated June 16, 1998 by allowing operation of the trading terminals (with regard to F&O operations) by persons without NSE's Certification in Financial Markets. In terms of the said circular, the trading members shall be required to have qualified approved user and sales persons who have passed a Certification Programme approved by SEBI. Thereafter SEBI vide circular dated June 29, 1998 approved the NSE's Certification in Financial Markets, in continuation of its earlier circular dated June 16, 1998. Admittedly, the sub broker was not holding the aforesaid certificate during the relevant period of time.

4. Besides, the sub broker had also executed trades for his clients in his proprietary code, in violation of SEBI circular dated February 13, 2001. The inspection conducted by SEBI observed that there were some un-registered clients who had traded in the cash segment of NSE in the proprietary code of the sub broker. The sub broker provided details of such unregistered clients and the same were elaborately explained in the Enquiry Report. In respect of the said clients, it is observed that the stock broker (M/s. Growth Avenue Ltd.) had issued contract notes in the name of Mr. Sanjiv K. Shah and he in turn issued bills to the said clients in the name of trade name, AIC. In terms of SEBI circular dated February 13, 2001, the sub brokers while acting on behalf of its clients, at the order entry level should provide the client code with effect from February 28, 2001. The circular dated February 13, 2001 was in operation at the relevant point of time. The sub broker failed to comply with the provisions of the SEBI circular dated February 13, 2001. In addition to the above violations, the inspection conducted by SEBI also observed that the sub broker had also failed to display the notice board of permanent nature at its office, as required under NSE circular dated April 20, 2000.

5. Besides, the sub broker had accepted cash payment from his clients for whom trades were executed in his proprietary account on their behalf. SEBI, vide circular dated November 18, 1993 stipulate that the member brokers should not accept cash for purchases of securities and / or give cash against sales of securities. Further, vide circular dated August 27, 2003, it was reiterated that the stock brokers and sub-brokers should not accept cash from the client whether against obligations or as margin for purchase of securities and / or give cash against sale of securities to the clients except in exceptional circumstances, as stated therein. In the present case, the inspecting authority observed that the sub broker was generally transacting in cash. Thus, it is established that the sub broker violated the provisions of SEBI circular dated August 27, 2003 read with SEBI circular dated November 18, 1993. In addition to the above violations, the Enquiry Officer also found that the sub broker, by executing off the floor transactions in the shares of a company and thus violated Regulation 4 of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 and Clause B (2) of the Code of Conduct of Schedule II of Broker Regulations and the circular dated September 14, 1999.

6. Thus, it is established that the sub broker violated provisions of the Act, the Broker Regulations and various circulars, as stated above in this order. As an intermediary operating in the securities market, the sub broker shall comply with all the required Rules and Regulations, *inter alia* specified by SEBI from time to time. The sub broker failed to comply with said Rules and Regulations which are put in place to protect the interest of investors in securities market in general. The sub broker failed to give any explanation in respect of the findings of the Enquiry Report. Instead, vide letter dated June 11, 2008, the sub broker accepted the penalty of suspension. In the facts and circumstances, I agree with the recommendation of the Enquiry Officer and the sub broker is liable to

be punished in accordance with law. I dispose of the present enquiry proceedings as ordered herein under.

7. 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 certificates of registration (No. INS230489812 and INS 231334819) of the sub broker namely, Mr. Sanjiv K. Shah (Trade Name: Aakash Investment Consultancy) for a period of three months.

8. This order shall come into force immediately on the expiry of twenty one days from the date of this order.

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

Place: Mumbai

Date: November 10, 2008