

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: Dr. T.C.NAIR, WHOLE TIME MEMBER

ORDER UNDER REGULATION 28(2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008 IN THE MATTER SHRI PARSHWA FINANCE, SUB BROKER AFILIATED TO M/s. P SURYAKANT SHARE AND STOCK BROKERS PVT. LTD., SEBI REGN NO. INS 011245110 IN THE SCRIP OF ACCURATE EXPORTS LTD.

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted an investigation into the buying, selling and dealing in the scrip of Accurate Exports Ltd. (hereinafter referred to as "AEL" / "the company") for the period January 1, 2001 to March 31, 2002. During investigations, it was observed that certain clients offloaded huge quantity of shares of AEL through select brokers. It was observed that the company issued and dematerialized huge quantity of shares in excess of authorized capital during the financial year 2001-2002. The authorized capital of the company was 2.1 crore however, issued and dematerialized capital was around 15.19 crore. Hence the company had issued around 13 crore shares during the financial year 2001-2002 in excess of authorized capital of the company. These shares were issued to various entities including entities related to Directors of the company who in turn transferred these shares to other entities who ultimately offloaded it in the market through select brokers.
2. It was alleged that the transactions done by Shri Parshwa Finance (hereinafter referred to as "the sub broker") a sub broker affiliated to M/s. P. Suryakant Share & Stock Brokers Pvt. Ltd., member of the Bombay Stock Exchange Limited (BSE) (hereinafter referred to as "P. Suryakant") constituted a substantial quantity of the total transaction of the market. These shares were fraudulently issued and dematerialised in excess of authorized capital of the company. Hence, it was alleged that the sub broker colluded with the clients in dealing in fraudulently issued shares of AEL on the exchange and thereby violated Regulation 6 (a) of SEBI (Prohibition of Fraudulent and

Unfair Trade Practices relating to Securities Market) Regulations, 1995 (hereinafter referred to as "PFUTP Regulations"). It was also alleged that the sub broker has dealt as an unregistered sub broker in violation of the provisions of section 12 of SEBI Act, 1992.

3. In view of the findings of investigation, an Enquiry Officer was appointed in terms of the then SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalties) Regulations, 2002 (hereinafter referred to as "Enquiry Regulations") to enquire into the violations / contraventions alleged to have been committed by the sub broker vide order dated July 16, 2004. The Enquiry Officer conducted the enquiry in terms of Enquiry Regulations and found that there was no nexus of the sub broker with the company or its directors in fraudulently issuing the shares of AEL. However, the Enquiry Officer found that the sub broker had violated the provisions of section 12 of the SEBI Act, 1992 by acting as a unregistered sub broker. The Enquiry Officer submitted report dated June 30, 2005 recommending a penalty of suspension of certificate of registration for a period of 15 days.
4. A copy of the enquiry report along with show cause notice dated July 12, 2005 was forwarded to the sub broker, in terms of Regulation 13 (2) of the Enquiry Regulations advising it to show cause as to why appropriate penalty including penalty as recommended by the Enquiry Officer should not be imposed upon it. The sub broker vide letter dated November 1, 2005 replied to the said show cause notice and stated that the registration as a sub broker with the broker P. Suryakant was granted on February 13, 2002 however the sub brokership with another broker was acquired since May 28, 2001. The unintentional procedural lapses which were rectified later shall not be viewed in a manner which leads to penal action. It was also submitted that P. Suryakant has discontinued trading with it and has canceled his sub brokership since July 15, 2004 and necessary procedures were being carried out for cancellation of its registration.
5. An opportunity of personal hearing was granted to the sub broker before me on June 27, 2007. The sub broker vide letter dated June 25, 2007 stated its inability to attend the hearing and made further written submissions. It submitted that the authority has overlooked the fact that SEBI had granted registration to the sub broker vide registration

certificate dated February 5, 2001 with the broker Jyotish Bhogilal Stock Brokers Pvt. Ltd. Therefore prior to the date of dealings in the scrip in question, the sub broker had been registered with SEBI. Hence it cannot be said that it had acted as an unregistered sub broker. It further submitted that the sub broker obtained another certificate of registration dated February 13, 2002 since it has stopped its transactions with broker Jyotish Bhogilal Stock Brokers Pvt. Ltd. and wanted to deal with P. Suryakant Share. The sub broker contended that neither the Act nor the Rules and Regulations framed thereunder require that the sub broker need to obtain different certificates of registration for dealing with different brokers. Therefore it cannot be said that the sub broker had acted as unregistered sub broker and hence violated the provisions of SEBI act, Rules and Regulations.

6. Having complied with the principles of natural justice, I am proceeding ahead on the basis of material available on record. I have carefully considered the Enquiry Report, the show cause notice issued to the sub broker and its replies / submissions and other material on record. My findings are as under:
 - 6.1 The company, AEL had authorised share capital of 2,10,00,000 shares. However the company had issued and dematerialized 15,19,10,650 shares. Thus, the company had fraudulently issued and dematted around 13 crore shares in excess of authorized capital. These shares were then transferred to other entities and offloaded in the market without being listed on the exchange. It was observed that the company had allotted shares without actual receipt of allotment money from the allottees.
 - 6.2 From the analysis of trade log, it was observed that where the delivery of shares was more than 5,00,000 shares, the member P Suryakant was a major buyer/seller. This broker had executed a number of deals for related clients. The orders entered were sufficiently exposed in the market and not many structured deals were observed during the period. It was observed that there was not much impact on the price of the scrip on the exchange.
 - 6.3 The member P Suryakant had traded with the sub broker, Shri Parshwa Finance, proprietor being Shri Piyush Jhaveri for various clients during the period of investigation. It was observed that the sub

broker was registered with the broker P Suryakant Shares & Stock Brokers Pvt. Ltd. much later, i.e. in February 2002 whereas it had executed trades on behalf of clients even prior to getting registered as sub broker to P Suryakant Shares. As per the statement of P Suryakant, BSE had already imposed a penalty of Rs. 25,000 on it for trading with an unregistered sub-broker i.e. Parshwa Finance. The broker P Suryakant had mostly delivered/received shares to/from the account of sub broker Shri Parshwa Finance for the trades of its clients. The payment was also made through account payee cheques favoring the sub broker. For pay-in obligation of the broker P Suryakant in settlement nos. 2001010 to 2001014, it had received shares to its pool account from the demat account of sub broker Shri Parshwa Profin P Ltd. (Director: Shri Piyush Jhaveri), which was not registered with the member as a sub-broker at that point of time.

- 6.4 It is important to adjudge the role of the sub broker with respect to aforesaid charges. The issue for consideration is whether the sub broker had any nexus with the company / its directors or the beneficiaries for whom it dealt in fraudulently issued shares of the company. I note that the company was the Share Transfer Agent (STA) and doing physical dematerialization of its own shares. The electronic STA was Purva Sharegistry (India) Pvt. Ltd. who was providing electronic lease line connectivity with the depository and responsible for giving the credit to the shareholder as per the terms of MOU signed with the company, AEL. From this it is evident that the company AEL was having the control over physical shares received for transfer to demat form.
- 6.5 The above system of handling physical STA activity and electronic STA activity at two different places by two different entities was prevalent during that time, however, this was found to be misused by companies by taking advantage of the system. In order to tackle the same SEBI had come out with circular nos. 15 and 17 dated December 27, 2002 and December 31, 2002 respectively. The circulars were issued to bring both the work of physical STA and electronic STA to be done by a common agency to avoid miscommunication and bring transparency regarding transfer of shares. SEBI had also issued circular no. D&CC/FITTC/CIR-16/2002 dated December 31, 2002 introducing secretarial audit for all listed companies by practicing Chartered Accountant/Company Secretary for the purpose of

reconciliation of the total admitted capital with both depositories and total issued and listed capital. All this development and reforms took place subsequent to the investigation period. From the aforesaid discussions, it is clear that the systems were not in place prior to issue of these circulars whereby the depositories could prevent the fraudulent activities of the companies in bringing out their shares in excess of their authorised capital.

- 6.6 In order to prove the charge that the sub broker colluded with the clients and the company in dealing in fraudulently issued shares, the evidence to show nexus of the sub broker is of utmost importance without which the charge cannot be sustained. From the material on record, there is no mention about any connection or relationship of the sub broker with the company, its directors and the beneficiaries who dealt in the shares which were issued fraudulently. In absence of any evidence, I do not find any nexus on the part of the sub broker in the whole process.
- 6.7 I am of the view that one of the essential ingredients for violating the provisions of Regulation 6 (a) of the PFUTP Regulations is that the person has to engage himself in an act or practice which would operate as a fraud on others. The enquiry officer has concluded that in the absence of sufficient and cogent evidence the act of the sub broker cannot be said to have operated as fraud upon any person in connection with the dealings of the sub broker in the share of AEL.
- 6.8 With regard to the charge of dealing as unregistered sub broker, it is admitted by the sub broker that it was registered with SEBI on February 13, 2002, whereas, as the show cause notice states that the sub broker executed trades on behalf of its clients even prior to getting registration. I observe that Shri Parshwa Finance obtained sub broker registration on February 5, 2001 affiliated to the broker Jyotish Bhogilal Stock Broking Pvt. Ltd. whereas it obtained sub broker registration affiliated to P Suryakant only in February 13, 2002, therefore I find that during the period of transactions, Shri Parshwa Finance was not a registered sub broker of P Suryakant.
- 6.9 I therefore, find the sub broker has violated the provisions of Section 12 of SEBI Act, 1992, which inter-alia provides that no sub broker

shall deal in securities without obtaining a certificate of registration from SEBI.

7. I note that though the Enquiry Regulations were repealed with effect from the notification of the 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 the Securities and Exchange Board of India (Intermediaries) Regulations, 2008. In view of the above, considering that there are no other investor complaints against the sub broker, I direct Shri Parshwa Finance to be cautious in future and an imposition of penalty of censure, would be adequate to meet the ends of justice.
8. Now, therefore, in exercise of powers conferred upon me in terms of section 19 of SEBI Act, 1992 read with Regulation 28(2) Of The Securities and Exchange Board of India (Intermediaries) Regulations, 2008 I hereby Censure Shri Parshwa Finance, member, Sub Broker affiliated to M/S. P Suryakant Share and Stock Brokers Pvt. Ltd., SEBI Regn No. INS 011245110.

DATE: 09.01.2009

T. C. NAIR

PLACE: MUMBAI

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA