WTM/TCN/106/ IVD1/Jan/ 09

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 OF KAKANI SECURITIES LTD, MEMBER HYDERABAD STOCK EXCHANGE LTD., SEBI REGISTRATION NO. INB 061007537 IN SCRIP OF FORTUNE INFORMATICS LTD.

1.1 Securities and Exchange Board of India (SEBI) had conducted investigations into the dealings in the scrip of Fortune Informatics Ltd. (hereinafter referred as 'FIL') for the period from October 01, 1999 to July 31, 2000. The shares of FIL were listed on Hyderabad Stock Exchange (hereinafter referred to as "HSE") and Calcutta Stock Exchange (hereinafter referred to as "CSE").

1.2 During the investigations, it was found that the price in the scrip of FIL on Hyderabad Stock Exchange (hereinafter referred to as "HSE") increased from Rs. 64 in October 1999 to Rs.106 in December 1999 and from December 06, 1999, it moved sharply and reached Rs. 654.92 on January 05, 2000 and went up to Rs. 665 on February 11, 2000. Subsequently, it came down to Rs. 55.75 on July 31, 2000.

1.3 It was alleged that Kakani Securities Ltd. (hereinafter referred to as "KSL"), traded with unregistered sub brokers namely M/s. PRS Shares and Finance (P) Ltd. (PRS), M/s. JCP Shares and Securities (P) Ltd. (JCP) and Narendra C Shah (NCS), (hereinafter referred to as "unregistered sub brokers") in the scrip of FIL and thereby violated SEBI Circular SMD/POLICY/CIR/3-97 dated March 31, 1997 read with section 12(1) of the SEBI Act, 1992, Rule 3 of the SEBI (Stock Broker and Sub Broker) Rules, 1992.

2.1 In view of the findings of the investigation, an Enquiry Officer was appointed, vide order dated September 19, 2005 under the then SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as "the Enquiry

Regulations") to enquire into the violations / contraventions alleged to have been committed by KSL. The enquiry officer conducted enquiry in terms of the Enquiry Regulations and submitted its report dated November 30, 2005 recommending a minor penalty of censure to KSL.

3.1 A copy of the enquiry report along with show cause notice dated January 4, 2006 was forwarded to KSL 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 on it. However, KSL did not reply to the said show cause notice.

3.2 An opportunity of personal hearing was granted to KSL before me on September 1, 2008. However, no one appeared on behalf of KSL for the hearing.

4.1 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 investigation report, Enquiry Report, the show cause notice issued to KSL and the submissions of KSL. 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. My findings are as under:

4.2 I note that the price of the scrip of FIL showed rapid fluctuations during the period of investigation. During this period, KSL had traded with unregistered sub brokers namely PRS, JCP and NCS as under:

PRS			**JCP**			**NCS**		
Date	**Settlement No.**	**Traded Qty**	**Date**	**Settl No.**	**Traded Qty**	**Date**	**Settlement No.**	**Traded Qty**
2/11/1999	28	3500	20/11/99	5	7300	10/12/99	147	8100
3/11/1999	252	2500	22/11/99	8	2300	17/12/99	7	2600

PRS			JCP			NCS		
Date	**Settlement No.**	**Traded Qty**	**Date**	**Settl No.**	**Traded Qty**	**Date**	**Settlement No.**	**Traded Qty**
13/11/1999	177	400	26/11/99	49	400	18/12/99	13	7600
20/11/99	6	48700	26/11/99	50	26500			
			Total		**36500**	**Total**		**18300**
26/11/99	40	3900						
26/11/99	51	47000						
27/11/99	9	5000						
29/11/99	2	12100						
29/11/99	32	111800						
3/12/1999	25	18600						
4/12/1999	11	3100						
6/12/1999	4	20700						
Total		**277300**						

4.3 KSL has contented that PRS, JCP and NCS are the members of the other exchanges and hence cannot be treated as unregistered sub brokers. I note that SEBI Circular no. SMD/POLICY/CIR-3/98 dated January 16, 1998 states that members of the stock exchange executing transactions of their clients through members of the other exchange are to be treated as the sub broker of the latter i.e. it prohibits member of one stock exchange from executing transactions of its clients to the members of other exchange without former obtaining certificate of registration as a sub broker. This circular was issued to provide redressal mechanism in case of default, when member of one stock exchange traded through member of other exchange. Such default jeopardizes the interests of the clients as they do not have any legal recourse to the exchange as the transactions occur in other exchange in which the clients broker is not a member. In other words, if PRS, JCP and NCS defaulted to its client when trading on HSE through KSL, the aforesaid sub brokers client would neither have recourse to HSE as these sub brokers are not a member of HSE nor will they have recourse to BSE or CSE as the trades do not pertain to BSE or CSE. In order to address such a situation, SEBI came out with the aforesaid circular as a means of investor protection. I agree with Enquiry Officer and is of the view that the aforesaid circular has clarified the legal position that any sub broker is required to be registered, irrespective of the fact that it is a broker

on some other exchange. The contention raised by KSL in this regard is devoid of merit.

4.4 However, after perusal of record, I find that there is nothing to suggest that PRS, JCP and Narendra Shah had certificate of registration as a sub broker of KSL. In view of the above, I find that these entities have violated circular dated January 16, 1998 provided the aforesaid trades were executed for their clients.

4.5 The enquiry officer has further found that the show cause notice does not furnish material/information/data to evidence that the aforesaid sub-brokers indeed have traded on behalf of their clients. Only the settlement wise quantities of share trades are available. I am of the view that the case is squarely covered by the judgment of the Hon'ble SAT in its order dated May 30, 2003 in the matter of *Radar Securities vs. SEBI* wherein it was held that "*in absence of reasonable evidence it is not possible to subscribe to the Respondents' version holding the Appellant guilty of trading with unregistered sub brokers/ unapproved remisiers*".

4.6 KSL has raised a contention before the Enquiry Officer that PRS, JCP and Narendra Shah traded on their own account and furnished photocopies of three contract notes in Form B, pertaining to these trades. In this regard, I note that in terms of SEBI Circular SMD (B)/104/22775/93 dated October 23, 1993, contract notes in form B are required to be issued when the member of the exchange is acting as a principal. Further, a written consent for the same has to be obtained from the counter party in terms of Rule 15(2)(c) of Securities Contract (Regulations) Rules, 1957 read with Regulation 17(1)(j) of SEBI(Stock Broker and Sub Broker) Regulations, 1992. KSL submitted that PRS, JCP and Narendra Shah have traded on their own account and furnished photocopies of three contract notes in Form B pertaining to these shares. After examining these contract notes, I find that KSL did not furnish written consents of PRS, JCP and Narendra Shah in support of its contention for the alleged principal to principal trades.

4.7 I further note that 2300 shares of FIL were traded by JCP through KSL on November 22, 1999 in settlement no. 8 whereas in the copy of contract note no. 137 in form B furnished by KSL, it is observed

that KSL has sold 5000 shares of FIL to JCP on November 22, 1999. This implies that the trades have taken place "on the floor" of the exchange, whereas issuance of contract notes in form B connotes that the trade is of the floor transactions. Therefore, I find that the veracity of the copies of the contract notes furnished by KSL is doubtful.

4.8 In the copy of Contract no. 133, in Form B, furnished by KSL it is seen that KSL has sold 31,000 shares of FIL to PRS on November 18, 1999 whereas the show cause notice does not allege any trade in FIL shares by PRS through KSL on November 18, 1999. From the aforesaid, no other inference is possible other than the fact that KSL attempted to mislead the Enquiry Officer.

4.9 KSL had tried to mislead the Enquiry Officer which is supported from the reply on record of JCP shares in the same investigations and enquiry conducted by SEBI where JCP has admitted dealing for its clients to the extent of 7000 shares of FIL, with KSL. It gets established that KSL has dealt with unregistered sub broker since JCP, PRS and Narendra Shah are brokers of different exchanges and are not registered with SEBI to act as sub broker of KSL. It is also an admitted fact that JCP, PRS and Narendra Shah had traded in the scrip of FIL through KSL. Therefore, the broker KSL has violated the provisions of SEBI Circular no. SMD/POLICY/CIR/3-97 dated March 31, 1997 which stipulates as under :

"No broker shall deal with a person who is acting as a sub broker unless he is registered with SEBI. It shall be the responsibility of the broker to ensure that his client are not acting in the capacity of a sub-broker unless he is registered with SEBI as sub broker or is recognized by the stock exchange as a remisier".

4.10 Therefore having gone through the facts and circumstances of the case, I am of the considered view that ends of justice will be met by imposing a penalty of censure to Kakani Securities Ltd.

5.1 Therefore, in exercise of the powers conferred upon me by virtue of Section 19, read with Regulation 28(2) of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 I hereby 'Censure' Kakani Securities Ltd. SEBI registration No 061007537 and PAN No.

AAACK7467L to the effect that he should be careful in future and exercise due care and diligence in the conduct of its affairs as a capital market intermediary. I also direct Kakani Securities Ltd, SEBI Registration No. INB 061007537 to note that any instances of violation or non-compliance with the SEBI Act, Rules and Regulations in future shall be dealt with stringently.

DATE: 09.01.2009 **T.C.NAIR**

WHOLE TIME MEMBER

PLACE: MUMBAI **SECURIITES AND EXCHANGE BOARD OF INDIA**