

WTM/KMA/MIRSD/32/01/2009

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 H.K. FINANCE & CAPITALS LIMITED, MEMBER, NATIONAL STOCK EXCHANGE OF INDIA LIMITED.

Date of hearing: January 7, 2009

Appearance:

For H.K Finance & Capitals Limited: Mr. Manjeet Singh, Director

For Securities and Exchange Board of India:

Mr. Piyoosh Gupta, General Manager

Mr. Vijayakrishnan G., Assistant Legal Advisor

Mr. Gyanendra Niraj, Manager

1. Securities and Exchange Board of India (hereinafter referred to as SEBI), appointed M/s. Kapoor & Parekh Associates, Chartered Accountants to conduct an inspection of the books of accounts, documents and other records of H.K. Finance & Capitals Limited, trading member of the National Stock Exchange of India Limited (hereinafter referred to as NSE) in the month of January 2003. The period covered under the inspection was April 2000 to October 2002. H.K. Finance & Capitals Limited is hereinafter referred to as the Broker for the sake of brevity. The aforesaid inspection observed various irregularities. A copy of the inspection report was forwarded to the Broker by SEBI vide letter dated April 7, 2003. Pursuant to the receipt of the comments of the Broker, SEBI, vide order dated December 16, 2003 appointed an Enquiry Officer under the

provisions of Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (since repealed) to enquire into the alleged violations committed by the Broker, as stated therein. The Enquiry Officer, vide report dated December 17, 2004 recommended the imposition of penalty of suspension of the certificate of registration of the Broker for a period of three months. The Broker neither filed its reply nor appeared before the Enquiry Officer during the proceedings. The Enquiry Officer, *inter alia*, observed that the Broker violated the provisions of various SEBI circulars.

2. Pursuant to the submission of the Enquiry Report, a notice dated December 22, 2004 was issued by SEBI to the Broker asking 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. A copy of the Enquiry Report was also forwarded to the Broker along with the said show cause notice. As no reply was received from the Broker, SEBI provided further opportunities from time to time vide various letters dated October 25, 2007, May 30, 2008 and September 1, 2008. Thereafter, the Broker vide letter dated September 15, 2008 stated that, it had closed down its office and operation as a member of NSE for the last few years and that it was not in a position to file any reply to the aforesaid show cause notice. Subsequently, SEBI granted an opportunity of hearing to the Broker on January 7, 2009. Mr Manjeet Singh, Director of the Broker appeared before me and submitted that he had nothing to say in the matter.

3. I have considered the Enquiry Report, show cause notice issued to the Broker, its letter dated September 15, 2008 and other materials available on record. The present enquiry proceedings is being dealt with in terms of Securities and Exchange Board of India (Intermediaries) Regulations, 2008. The Enquiry Officer observed the following irregularities:

- Failure to maintain statutory books.
- Discrepancies in contract notes
- Trades on different codes.
- Non segregation of clients' funds and its own funds
- Number of terminals were operated in different cities by single sub broker.
- Dealing various transactions on own name and then transferring the same in the client's name.

4. The Enquiry Officer found that the Broker *inter alia* violated various circulars of SEBI dated August 5, 1996, January 16, 1998, February 11, 1997, April 11, 1997, July 18, 2001 etc. I note that the Inspection Report as well as the Enquiry Report explained the irregularities/violations committed by the Broker in length. Though, the said reports were provided to the Broker, it had not taken any effort to controvert the findings therein. Sufficient opportunities were provided to the Broker even after the submission of the Enquiry Report. The Broker vide letter dated September 15, 2008 stated that it was not in a position to file any reply. The director of the Broker appeared before me and stated that he had nothing to submit in the matter. In this facts and circumstances, I do not consider it necessary to explain the violations committed by the Broker in detail in this order. It is one of the mandatory requirement under the provisions of Securities and Exchange Board of India (Stock Brokers and Sub -Brokers) Regulations 1992 (hereinafter referred to as the Broker Regulations) to maintain statutory books. In the present matter, it is established that the Broker had failed to maintain proper books. This is not in dispute. The non maintenance of such books of accounts is in violation of the provisions of Regulation 17(1) of the above mentioned Regulations. Further, SEBI, vide circular dated August 05, 1996 *inter alia* advised that a serious view would be taken in case a stock broker is found to have 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 including discrepancies in respect of contract notes. The Enquiry Officer also found the Broker guilty of the said irregularity. Despite giving number of opportunities, the Broker chose not to explain its case in respect of the said violations. Thus, I do not have any hesitation to hold that the Broker violated SEBI circular dated August 5, 1996. Besides, the Broker failed to segregate the clients' funds and its own funds, as required under SEBI circular dated November 18, 1993. In terms of the said circular, there should be clear cut segregation of the funds and securities of the clients and the funds and securities of the Broker. The Broker also violated various other circulars as specified in the Enquiry Report. As the Broker chose not to respond to the findings of the Enquiry Officer, I do not consider it necessary to reiterate all the violations committed by it. Thus, it is established that the Broker violated provisions of Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations 1992 and various circulars as mentioned in the Enquiry Report. As an intermediary operating in the securities market, the Broker shall comply with all the required Rules and Regulations, *inter alia* specified by SEBI from time to time. In the present case, the Broker violated various basic norms/requirements as explained in the Enquiry Report. The Broker is silent on these findings. The necessary consequence would be a penalty under the provisions of Securities and Exchange Board of India (Intermediaries) Regulations, 2008. In the facts and circumstances, the present enquiry proceedings against the Broker stands disposed of as ordered herein under.

5. 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, H.K. Finance & Capitals Limited (Registration number INS230681235), Member, National Stock Exchange of India Limited for a period of one month.

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

--sd--

K. M. ABRAHAM

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA

Place: Mumbai

Date: January 27, 2009