

WTM/KMA/MIRSD/31/01/2009

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 SURE CAPITAL PRIVATE LIMITED, MEMBER, PUNE STOCK EXCHANGE LIMITED.

Date of hearing: January 7, 2009

Appearance:

For Sure Capital Private Limited: Mr. Ashok Nahar and Mr. Milind Badgujar, Directors

For Securities and Exchange Board of India:

Mr. Piyoosh Gupta, General Manager

Mr. Vijayakrishnan G, Assistant Legal Advisor

Mr. Anjan Patel, Manager

1. Securities and Exchange Board of India (hereinafter referred to as SEBI), vide order dated October 30, 2002 appointed M/s. Yardi Prabhu & Associates, Chartered Accountants to conduct an inspection of the books of accounts, documents and other records of M/s Sure Capital Private Limited, member Pune Stock Exchange Limited (hereinafter referred to as PSE), in the month of November/December 2002. The period covered under the inspection was April 2000 to November 2002 (hereinafter referred to as the inspection period). M/s Sure Capital Private Limited is hereinafter referred to as the Broker. The Broker was also registered with SEBI as a sub broker of PSE Securities Ltd. The aforesaid inspection observed various irregularities committed by the Broker. A copy of the inspection report was forwarded to the Broker by SEBI, vide letter dated March 26, 2003. Pursuant to the receipt of the comments, SEBI 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Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (since repealed) to enquire into the alleged violations committed by the Broker, as stated therein.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 February 10, 2005 recommended the imposition of penalty of cancellation of the certificate of registration of the Broker. The Enquiry Officer observed that the Broker *inter alia* violated the provisions of various circulars of SEBI.

2. Pursuant to the submission of the Enquiry Report, a notice dated February 16, 2005 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. Though, the said show cause notice was delivered on the Broker, it chose not to respond. Thereafter, SEBI granted an opportunity of hearing to the Broker on January 7, 2009. Mr. Ashok Nahar and Mr. Milind Badgujar, Directors of the Broker appeared before me and stated that they had nothing to say in the matter.

3. I have considered the Enquiry Report, show cause notice issued to the Broker and other materials available on record. The present enquiry proceeding is being dealt in terms of Securities and Exchange Board of India (Intermediaries) Regulations, 2008. I note that the Enquiry Officer in his report dated February 10, 2005 observed various violations such as, non maintenance of statutory books, failure to issue contract notes, non maintenance/deficiencies in client data base, dealing with unregistered sub broker, failure to collect margin, keeping clearing terminals at unauthorized places etc. I note that no submission was made by the Broker before the Enquiry Officer in respect of the charge of non maintenance of client data base. Needless to say, the Broker

kept silent on this issue, even before me. The Broker chose not to controvert the findings of the Enquiry Officer. In terms of SEBI circular dated February 11, 1997, it is the duty of a stock broker to maintain a database of their clients. Subsequently, vide circular dated April 11, 1997, SEBI had once again advised the stock brokers to follow its previous circular dated February 11, 1997. In the circular dated April 11, 1997, SEBI had further advised that the stock brokers might seek supplementary information, if any, so as to satisfy themselves about the background of the clients. As per the said circulars, it would be the responsibility of the stock brokers to provide for client details as and when need arose. The said requirements are made in conformity with the Know Your Clients (KYC) norms. A stock broker has to ensure that he fulfils the primary requirement of obtaining documents such as client registration forms, member client agreements etc. as required under the aforesaid circulars. The object is to facilitate the stock brokers to assess the client before he takes up trading for the clients. When a stock broker fails to perform the said primary requirement and if he executes transactions on behalf of such clients without knowing their background and financial capacity, he is putting the system in risk. In the present case, the Broker failed to maintain the data base, which is in violation of circulars dated February 11, 1997 and April 11, 1997. Needless to say, by doing so, it failed to verify the background and the financial capacity of its clients. Besides, it is one of the mandatory requirements 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 found that the Broker had failed to maintain order book, margin deposit book. The Broker stated before the Enquiry Officer that, it had not maintained formal hard copy of the Order Book. The non maintenance of such books of accounts is in violation of the provisions of Regulation 17(1) of the above mentioned Regulations.

4. It was also observed by the Enquiry Officer that the Broker had dealt with unregistered sub broker. It was alleged that the Broker had dealt with an unregistered sub broker namely, Sure Consultancy Private Limited. I note the submission of the Broker before the Enquiry Officer that, it had stopped trading with the aforesaid entity. This very submission of the Broker would indicate that it had dealt with an unregistered sub broker. It is not the case of the Broker that the said entity had a valid registration with SEBI as a sub broker. In terms of SEBI circular dated March 31, 1997, no stock broker shall deal with a person who is acting as a sub-broker unless he is registered with SEBI. The said circular *inter alia* stipulate that, it shall be the responsibility of the stock broker to ensure that his clients are not acting in the capacity of a sub-broker unless he is registered with SEBI as sub-broker. It would lead to the conclusion that the Broker violated the SEBI circular dated March 31, 1997. Besides, the Broker had admittedly failed to collect margin. Thus, the Broker violated SEBI circular dated May 17, 2002.

5. Admittedly, the Broker failed to issue contract notes, as required in terms of SEBI circular dated August 5, 1996. These violations are serious in nature and cannot be taken lightly in the facts and circumstances of the present case, as the Broker had totally failed to comply with the basic requirements/norms, such as failure to comply with KYC norms, failure to collect margin etc. I further note that the Enquiry Officer in his report observed that the Broker had provided a terminal to Sure Consultancy Private Limited. In terms of SEBI circular dated October 22, 2001, the stock exchanges were advised to grant trading terminals to the stock brokers only at its registered office, branch offices and their registered sub-brokers' offices. Sure Consultancy Private Limited is not a registered sub broker of the Broker. This fact is already discussed in detail above in this order. The very act of the Broker, providing trading terminal admittedly not belonged to any of the

categories specified in SEBI circular dated October 22, 2001 is clearly in violation of the said circular. 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 of SEBI. As an intermediary functioning in the securities market, the Broker shall comply with all Rules and Regulations, *inter alia* specified by SEBI from time to time. In the present case, admittedly, the Broker had failed to comply with most of the basic norms. Before entering into any transaction on behalf of a client, a stock broker shall enter into member client agreement, client registration form etc. with its client and shall further, collect margin. These requirements are fundamentals. A stock broker dealing with its clients without fulfilling these basic requirements puts the system at risk. Not only did he fail to comply with the basic requirements, but the Broker also unauthorisedly provided trading terminal to one of its client, in strict violation of the SEBI circular dated October 22, 2001. No submission was made, before me during the course of the personal hearing, by the representatives of the Broker, in respect of the findings of the Enquiry Officer. This is nothing but an implied admission on the part of the Broker in respect of the violations. Besides, I also note that, SEBI vide order dated December 8, 2006 cancelled the certificate of registration of Sure Capital Private Limited, as a sub broker of PSE Securities Limited. The said order was passed, as Sure Capital Private Limited (in its capacity of a sub broker) had failed to pay the penalty of Rs. 1,50,000/- imposed by the Adjudicating Officer, SEBI, vide order dated October 1, 2004. It is the duty of the stock broker to abide by all the provisions of rules and regulations *inter alia* issued by SEBI from time to time. By failure to do so, in the facts and circumstances, the Broker *inter alia* violated the conditions of registration. Such a stock broker shall face the consequence in accordance with law. The violations committed by the Broker are serious in nature. All basic norms are flouted by the Broker. Considering the totality of the facts and circumstances of the present case, I consider it as a fit case to

impose the penalty as recommended by the Enquiry Officer. Thus, the present enquiry proceedings against the Broker stands disposed of as ordered herein under.

6. 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 cancel the certificate of registration of the stock broker, Sure Capital Private Limited (Registration Number INB 111092137/Permanent Account Number AAECs2290R), Member, Pune Stock Exchange Limited.

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

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K. M. ABRAHAM

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA

Place: Mumbai

Date: January 27, 2009