

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: DR. K. M. ABRAHAM, WHOLE TIME MEMBER

**ORDER UNDER REGULATION 28(2) READ WITH REGULATION 29 OF
SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES)
REGULATIONS, 2008 IN THE MATTER OF MCI SECURITIES LIMITED
AND MANEKLAL CHUNILAL INVESTMENTS PRIVATE LIMITED**

Date of hearing: January 7, 2009

Appearance:

For MCI Securities Limited and Maneklal Chunilal Investments Private Limited:

Mr. Prakash K. Shah, Advocate
Mr. Ashit V. Shah, Director
Mr. Vipin M. Shah, Director

For Securities and Exchange Board of India:

Mr. Piyoosh Gupta, General Manager
Mr. Vijayakrishnan G, Assistant Legal Advisor
Mr. Vir Sahab Singh, Asst. General Manager.

1. Securities and Exchange Board of India (hereinafter referred to as SEBI) received complaints from various investors alleging that M/s. MCI Securities Private Limited (sub broker registered with SEBI) borrowed securities from them and thereafter, cheated them by claiming itself to be an approved intermediary under the Securities and Exchange Board of India (Securities Lending Scheme) 1997 (hereinafter referred to as the said Scheme). MCI Securities Private Limited is registered as a sub broker of Nirmal Bang Securities Private Limited (Member, National Stock Exchange of India Limited) and M/s Vidyut Devendrakumar (Member, Bombay Stock

Exchange Limited) with registration no. INS231095337 and INS010953532, respectively. MCI Securities Private Limited is hereinafter referred to as the sub broker for the sake of brevity. Besides, there were press reports *inter alia* stating the following:

- a. The Economic Offences Wing of the Mumbai Crime Branch arrested Mr. Ashit V. Shah, director of the sub broker for duping investors to the tune of Rs.50 crores.
- b. Mr. Ashit V. Shah acting for the sub broker after accepting money from the clients for the purchase of shares, either did not buy the shares or bought only a part of the shares. He did not transfer the shares to the investors' demat accounts and again sold their shares without their knowledge. He also stopped paying the interest to the investors on shares lent by them under the purported scheme.

2. The investors who lodged complaint with SEBI against the sub broker had also enclosed copy of the respective complaint filed by them with the police authorities. It was noticed that the directors of the sub broker namely, Mr. Manish V. Shah and Mr. Ashit V. Shah were also the directors of Maneklal Chunilal Investments Private Limited, a stock broker registered with SEBI having registration no. INB241129130 and a trading member of Inter connected Stock Exchange of India Limited. Maneklal Chunilal Investments Private Limited is also registered as sub broker (registration no. INS230782638) of ISE Securities & Services Limited and Nirmal Bang Securities Private Limited (registration no. INS01013513). Maneklal Chunilal Investments Private Limited is hereinafter referred to as the Broker for the sake of brevity. In the meanwhile, Inter connected Stock Exchange of India Limited informed SEBI that it had *inter alia* suspended the trading rights of the Broker, pending investigation by the Economic Offence Wing of Mumbai Crime Branch. In this background, in order to protect the interests of

investors in securities market, SEBI vide an ad interim ex-parte order dated September 15, 2005 *inter alia* prohibited the sub broker and the Broker including their directors namely Mr. Ashit V. Shah, Mr. Manish V. Shah, Mr. Vipin M. Shah, Ms. Daksha V. Shah and Mr. H.V. Shah from buying, selling or dealing in securities in any manner whatsoever either for themselves or for their clients till further orders. Thereafter, SEBI, vide order dated August 31, 2005 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 and the sub broker. Subsequently, the Enquiry Officer vide report dated July 20, 2006 recommended the cancellation of the certificate of registration of the Broker and the sub broker. SEBI issued separate notices dated July 31, 2006 to the Broker and the sub broker asking them to show cause as to why appropriate penalty including penalty as recommended by the Enquiry Officer should not be imposed against them.

3. The Broker vide letter dated January 2, 2007 *inter alia* stated that it had carried out its dealings in securities market as a registered stock broker and sub broker till September, 2000. According to the Broker, there was no outstanding liability, when it had decided to close down its business in the year 2000. The Broker added that there was no investor complaint/litigation/arbitration against it. The Broker claimed that it had not carried out any activity since October, 2000 and that it had submitted its application with the stock brokers (in respect of its sub broking activities) and also with ISE (in respect of its stock broking activities) for the surrender of its respective certificates of registration. The Broker further added that the sub broker was incorporated in March, 2000, since Mr. Vipin M. Shah, Ms.

Daksha V. Shah and Ms. Hasumathi Shah, directors of the Broker were not interested in the share broking business. According to the Broker, Mr. Ashit V. Shah, Mr. Manish V. Shah and their father Mr. Vinod M. Shah promoted a new company in the name of the sub broker and, thereafter the share broking business was continued exclusively in the name and style of the sub broker. Further, it added that the business of the Broker and the sub broker were conducted independent to each other since 2000. According to the Broker, the press reports in respect of the taking over of its liabilities by the directors of the sub broker were misleading and factually incorrect. The Broker stated that it cannot be held responsible for any act of omission or commission of the sub broker, as it is a distinct legal entity from that of the sub broker. It further stated that though, it is agreeable to the recommendation of the Enquiry Officer for cancellation of its certificates of registration (stock broker/sub broker), it should not be imposed as a penalty.

4. The sub broker vide letter dated September 27, 2008 *inter alia* stated that it had surrendered its certificates of registration to the respective stock brokers for cancellation. According to the sub broker, though Mr. Ashit V. Shah, Mr. Manish V. Shah and Mr. Vinod M. Shah were its directors, its business was managed only by Mr. Ashit V. Shah and Mr. Manish V. Shah. The sub broker stated that all its directors stated above were arrested by the Economic Offences Wing, Crime Branch in respect of the complaint filed by the investors. The sub broker stated that it had borrowed shares from their clients to raise working capital requirements. It admitted the execution of an agreement in respect of such lending of securities. According to the sub broker, it had never acted as an approved intermediary under the said Scheme. The sub broker further contended that till March 2005 it had regularly paid interest to their clients who had lent shares. According to the

sub broker, the value of the borrowed securities is less than Rs.50 crores and that a chargesheet (Case No. P/154 of 2005) is already filed by the Economic Offence Wing before the Hon'ble 19th Esplande Court. The sub broker contended that Mr. Vipin Shah, Ms. Daksha V. Shah and Ms. Hasumathi V. Shah were not at all involved in its activities and that they are the directors of the Broker.

5. Thereafter, an opportunity of hearing was granted to the Broker as well as the sub broker (hereinafter collectively referred to as the noticees) on January 7, 2009. Mr. Prakash K. Shah, Advocate appeared and made submissions on behalf of the noticees. Mr. Ashit V. Shah (director of the sub broker) and Mr. Vipin M. Shah (ex-director of the Broker) were also present at the time of the hearing. As the subject matter in question is substantially same (as against the Broker and the sub broker), I consider it appropriate to pass a common order in the matter. During the course of hearing, Mr. Prakash K. Shah, advocate that his clients (noticees) does not have any objection in SEBI canceling the certificates of registration. While conceding so, he submitted that the cancellation should not be imposed as a penalty. I note that the noticees in their respective replies requested SEBI to cancel their certificates of registration. In view of such submissions on behalf of the noticees, I do not consider it necessary to deal with the violations committed by the noticees in detail which are sufficiently explained in the Enquiry Report. Yet another reason for this, is that the noticees never disputed before me the borrowing of securities from the clients and the execution of an agreement in respect of such lending of securities. The present proceedings are initiated under the provisions of Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002. Though, the said Regulation was repealed with effect

from the notification of Securities and Exchange Board of India (Intermediaries) Regulations, 2008, the actions 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. The Enquiry Officer, in the present case, recommended the cancellation of the certificate of registration of the noticees. He also made his findings in detail for the basis of the said penalty. Thereafter, show cause notice was issued to the noticees followed by an opportunity of hearing. No explanation/submission was made in respect of the findings of the Enquiry Officer. The violation committed by the sub broker is not in dispute. The sub broker chose not to controvert the findings and recommendations of the Enquiry Officer during the course of hearing before me. In fact, the sub broker executed agreements with some of the investors claiming it to be an approved intermediary under the said Scheme. In one such agreement dated October 7, 2002 (executed between the sub broker and M/s. Z.M. Investment), the sub broker claimed itself to be an approved intermediary and stated "MCISEL has registered itself as an Approved Intermediary with SEBI vide Reg: No: INS011222531/01-00300". As a matter of fact, the sub broker was not an approved intermediary under the provisions of the said Scheme. The execution of agreement with false claim admittedly followed by mobilization of huge amount from the clients by itself indicates the manipulative intent of the sub broker. This is not expected of a person functioning in securities market especially from an intermediary registered with SEBI. Such an intermediary should not be allowed to continue in the securities market. The sub broker shall face necessary consequence for the violations committed by it. Once the violation is established, the only question remains to be decided is the quantum of penalty. Considering the totality of the facts and circumstances, I am unable to disagree with the

findings and recommendation of the Enquiry Officer in respect of the sub broker. In view of the above, I find no merit in the submission of the learned counsel not to impose the recommendation as a penalty against the sub broker.

6. In respect of the Broker, the main contention put forth before me is that it is a separate legal entity from that of the sub broker and cannot be punished for the violations committed by the latter. According to the Broker, there is nothing on record to show that it had either acted in concert with the sub broker or benefited out of the act of the sub broker. I note that, it was the sub broker which had entered into agreement with various investors without getting it registered as an approved intermediary under the said Scheme. Besides, it was the sub broker against whom the complaints were lodged with police authorities. However, some of the directors of the sub broker namely, Mr. Manish V. Shah and Mr. Ashit V. Shah were also the directors of the Broker. The findings of the Enquiry Officer in respect of the Broker are as follows (as mentioned at para 14 of the Enquiry Report):

“As regards Noticee No.2, it is no longer affiliated as sub broker to member of any exchange nor is it a member of any exchange, as per its own admission. In terms of Rule 5(d) and 4(a) of SEBI (Stock Brokers and Sub Brokers) Rules, 1992, affiliation to a member of any exchange and membership of any stock exchange are one of the conditions for grant of certificate to sub broker and stock broker respectively. Since noticee No.2 does not fulfill the aforesaid conditions, its registration as sub broker and stock broker is liable for cancellation in terms of Regulation 13(6) (b) of Enquiry Regulations, irrespective of the merits of the charge against it.”

7. However, I note that the certificates of registration of the Broker are not yet cancelled. On the other hand, the sub broker had only requested the respective stock brokers/stock exchange to arrange for the cancellation of its certificates of registration. In view of the above, considering the facts of the present case, I am unable to agree that the certificates of registration of the Broker are liable to be cancelled *inter alia* for the reason that it had ceased to be a member of the stock exchange, as observed by the Enquiry Officer. The Broker also stated that it had stopped carrying out any activity since 2000. The interim order was dated September 15, 2005. Considering the facts of the case, the submission of the Broker and also the fact that the Broker had already made its application for the surrender of its certificate of registration, I am of the view that no separate penalty needs to be imposed against the Broker. However, I hope that the Broker would take necessary and immediate steps to get its certificates of registrations cancelled in furtherance of its request made to the stock exchange/stock broker as the case may be. In the facts and circumstances, the present enquiry proceedings against the noticees stands disposed of as ordered herein under.

8. 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) read with Regulation 29 of Securities and Exchange Board of India (Intermediaries) Regulations, 2008, hereby;

- i.) Cancel the certificates of registration of the sub broker namely MCI Securities Private Limited (Registration No. INS231095337 and INS010953532, Permanent Account No.AACCM2265J).

The order at (i) above shall come into force immediately on the expiry of twenty one days from the date of this order.

- ii.) Dispose of the enquiry proceedings against Maneklal Chunilal Investments Private Limited, without any further penalty for the reasons stated above.

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

Place: Mumbai

Date: February 3, 2009