

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

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

ORDER

UNDER REGULATION 28 (2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008 IN THE MATTER OF M/S. DINESH KUMAR LODHA, STOCK BROKER IN RESPECT OF HIS DEALINGS IN THE SHARES OF RADIANT FINANCIAL SERVICES LIMITED

1. The Securities and Exchange Board of India (hereinafter referred to as SEBI) had received a reference from the Ministry of Finance, Government of India in respect of certain reports that shares of some illiquid companies were traded in a circuitous route among certain members of a group operating collusively and the same were later on sold at highly inflated prices. On the basis of the said reference, SEBI initiated investigation into the dealing in the shares of certain companies while were listed at Calcutta Stock Exchange Association Limited (hereinafter referred to as CSE) for the period January 01, 2004 and February 28, 2005. One such company was Radiant Financial Services Limited (hereinafter referred to as the company). The said investigation was conducted in respect of the buying, selling and dealing in the shares of the said companies and to find out as to whether the said companies, stock brokers, intermediaries and traders had contravened the provisions of the Securities and Exchange Board of India Act, 1992 and the Rules/Regulations framed thereunder.

2. The investigation conducted by SEBI *inter alia* observed that the price of the shares of the company witnessed a sharp rise between January 01, 2004 and February 28, 2005. The average price of the shares of the company was Rs.1.95/- on February 16, 2004 which went up to Rs.225/- on February 25, 2005,

an increase of 11,438% over a period of 12 months. It was noticed that certain stock brokers viz. M/s Dinesh Kumar Lodha, Subh Stock Broking Private Limited, S. Jhunjhunwala & Co and Deepak Jhunjhunwala & Co. traded substantially in the shares of the company and that their cumulative trades accounted for 98.20% of the total (buy and sell) transactions in the said shares at CSE during the period of investigation. The details of their trades in the shares of the company during the period of investigation are mentioned below:

Name of the stock broker	Buy and Sell Volumes (number of shares)
Dinesh Kumar Lodha	6476450
Subh Stock Broking Private Limited	2318756
S. Jhunjhunwala & Co.	1924715
Deepak Jhunjhunwala & Co.	929550

3. The investigation conducted by SEBI further revealed that the said stock brokers had also executed matched trades in the shares of the company. M/s. Dinesh Kumar Lodha (hereinafter referred to as the stock broker) was one such stock broker who had substantially traded in the shares of the company during the investigation period at CSE. His trading accounted for 54.60% of the total trading volume in the shares of the company at CSE during the relevant period. It was further noticed that most of the transactions entered into by the stock broker in the shares of the company were in the nature of cross deals/self trades and synchronised transactions. It was found that the stock broker had synchronised its trades with the stock brokers, namely, Subh Stock Broking Private Limited, S. Jhunjhunwala & Co. and Deepak Jhunjhunwala & Co. It was *inter alia* alleged that the transactions of the stock broker, which were not genuine and were designed to create false and misleading appearance of trading in the shares of the company, were prima facie in violation of the provisions of Regulations 4(2)(a), 4 (2)(e) and 4(2)(o) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as PFUTP Regulations) and

Regulation 7 of the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as the Broker Regulations) read with clauses A(1), A(2), A(3), A(4) and B(4)(a) of the Code of Conduct prescribed under Schedule II thereof.

4. Thereafter, SEBI, vide order dated November 12, 2007 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 stock broker. Though, Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as the Enquiry Regulations) was repealed with effect from the notification of Securities and Exchange Board of India (Intermediaries) Regulations, 2008, (hereinafter referred to as the Intermediaries Regulations) anything done and any action taken under the said Enquiry Regulations before the publication of the Intermediaries Regulations in the Official Gazette are deemed to have been done or taken or commenced under the corresponding provisions of the Intermediaries Regulations. Accordingly, the Enquiry Officer/Designated Authority (hereinafter referred to as the Enquiry Officer), submitted the Enquiry Report under the provisions of the Enquiry Regulations read with the provisions of the Intermediaries Regulations. In the said Report, the Enquiry Officer found the stock broker guilty of contravening the provisions of the PFUTP Regulations and the Broker Regulations as alleged against him. The Enquiry Officer recommended the suspension of the certificate of registration of the stock broker for a period of six months. The Enquiry Officer further made an observation that, in the matter of Adinath Bio-Labs Limited, SEBI, vide an ad- interim ex parte order dated November 30, 2005 directed various entities/stock brokers, including the stock broker not to buy, sell or deal in securities, in any manner, either directly or indirectly, till further directions. He also noted that, SEBI, after affording an opportunity of hearing to the aggrieved persons, vide order dated May 31, 2006,

confirmed the directions (as against the stock broker) passed vide its earlier order mentioned above. Subsequently, SEBI, vide another order dated August 11, 2008 vacated the aforesaid directions, pending enquiry proceedings. In this background, the Enquiry Officer recommended setting off the recommended period of suspension against the period already undergone by the stock broker.

5. Pursuant to the submission of the Enquiry Report, a notice dated February 13, 2009, under Regulation 13 (2) of the Enquiry Regulations read with Regulations 28 (1) and 38 (2) of the Intermediaries Regulations was issued to the stock broker calling upon it to show cause as to why the penalty as recommended by the Enquiry Officer or as considered appropriate by SEBI should not be imposed. A copy of the Enquiry Report was also forwarded to the stock broker with the said show cause notice. The stock broker was also advised to inform SEBI, whether he desired to avail an opportunity of hearing. In reply, the stock broker, vide letter February 25, 2009 stated that the trades were executed as per the instructions of his clients. According to the stock broker, he was neither the beneficiary of the trades nor had gained anything or taken any unfair advantage. The stock broker contended that he was not related to the promoters of the company. The stock broker stated that no loss was caused to any investor. He further requested SEBI to take a lenient view in the matter. Further, the stock broker informed that the personal hearing is not required before SEBI again.

6. I have considered the Enquiry Report, the reply of the stock broker dated February 25, 2009 and other materials available on record. On consideration of the same, I find that the question that needs to be determined is whether the stock broker contravened the relevant provisions of the PFUTP Regulations and the Broker Regulation while dealing in the shares of the company during the period of investigation, as observed by the Enquiry Officer. My findings in this regard are as under.

7. I note that the transactions executed by the stock broker in the shares of the company during the period of investigation are not disputed by him either before the Enquiry Officer or before me. In his reply dated February 25, 2009, the stock broker merely stated that all his transactions were on behalf of the clients and that he had not gained any unfair advantage. It is not in dispute that the price of the shares of the company had increased from Rs.1.95/- on February 16, 2004 to Rs.225/- on February 25, 2005, thereby witnessing a price rise of about 114,38% within a period of one year. The total trading volume in the shares of the company during the period under investigation was 1,18,58,944 shares. The trade details of the stock broker, in the shares of the company during the relevant period is as under:

Name of the broker	Trade Data					
	No. of shares bought	% to Total Buy	No. of shares sold	% to Total Sell	Total no. of shares	% to Total Buy & Sell
Stock broker	30,89,825	52.10%	33,86,625	57.10%	64,76,450	54.60%

8. I also note that the stock broker had entered into cross deals and synchronised deals while trading in the shares of the company during the period of investigation. The details of such cross deals and synchronised/matched deals (with other stock brokers) are given below:

Name and address of the stock broker	Cross and Matched transactions							
	Stock broker		Subh Stock Broking Private Limited		S. Jhunjhunwala & Co.		Deepak Jhunjhunwala & Co.	
	Qty	%	Qty	%	Qty	%	Qty	%
Stock broker	61,73,450	95.32	200	0.003	2,25,500	3.48	52,700	0.81

9. The stock broker also executed self trades in the shares of the company during the period of investigation. Details of such self trades are given below:

Self trades through own terminal (total) (no.)	% to Total Volume of the stock broker (no.)	Buy for self through own terminal (no.)	Sell for self through own terminal (no.)
60,16,650	93	30,89,425	29,27,225

It can be seen from the above table that 60,16,650 shares out of his total trades of 64,76,450 shares in the company were his self trades. The said self trades accounted for 93% of his total trades in the shares of the company. These trades were executed from the same terminal of the stock broker. The stock broker is found to be the counterparty to his own trades and was executing both buy and sale orders of identical volume and price. He acted as a client on both sides (buy and sell). One such instance of the stock broker's self trades was that on January 13, 2004 the stock broker had placed a sell order for 500 shares at 11:47:12 a.m. Within seconds, he placed a buy order for 500 shares at 11:47:21 a.m., which matched with his own sell order placed earlier. In this manner, he had executed a total of 99 trades on the said day for large number of shares of the company. It is also revealed that the stock broker had executed a total of 97 on the said day between 12:06:22 p.m. and 12:25:19 p.m. It is pertinent to note that the stock broker was the lone buyer and seller in the scrip in the entire market on the said date. Numerous such instances can be seen from the order log, for the relevant period, which was already provided to the stock broker by SEBI. The trades of the stock broker caused price fluctuation in the shares of the company. Thus, the stock broker manipulated the price of the securities as he was *inter alia* trading on both side (buy and sell) continuously without the change in beneficial ownership of shares. This proves that the trades of the stock broker were artificial which created false and misleading appearance of trading in the scrip.

10. The transaction details of the stock broker indicates that 95.32% of his total transactions were in the nature of cross trades. It was found that the stock broker was placing the buy order and the corresponding sell order. Most of his cross deals were self trades, as mentioned in para 9 of this order. It was further observed that on each day of trading, the stock broker was punching buy and the corresponding sell orders for itself for the same quantity and price. Majority of the other trades executed by him were synchronised trades. The time lag between the said orders was in seconds and by reason of which the orders had matched by synchronisation. This resulted in squaring of trades and the net delivery was nil to the stock exchange during the trade settlement. It was also noticed that such trades had created huge trading volume without any change in the beneficial ownership. The trade details (including cross deals and synchronised trades) of the stock broker were provided to the stock broker with the show cause notice dated February 28, 2008 issued by the Enquiry Officer. The investigation conducted by SEBI observed that the stock broker executed large number of cross deals and that too almost continuously from January 05, 2004 to August 06, 2004. Besides, the stock broker also executed synchronised trades in the shares of the company. However, no effort has taken by the stock broker to controvert such observation/trade details. I note the stock broker in his reply dated March 12, 2008 filed before the Enquiry Officer, submitted that he had executed the impugned trades without any ulterior motive. I cannot accept such plea. When a stock broker execute cross deals (including self traders) continuously and consistently in the shares of a company for a considerable long period, the manipulative intent is attached to such transactions is very much evident. The stock broker also submitted that he did not know the counter party to his trades. Besides, the contention of the stock broker, vide letter dated March 12, 2008 that he was unaware of the counterparty clients cannot be believed for two reasons. First of all, most of his trades were cross deals. Cross Deal refers to a trade where a stock broker executes orders for both the buying and the selling client. Thus, in a cross deal, both the trades are executed through a common stock broker. Therefore, the contention that he was unaware of the

counterparty client is only to be dismissed. Secondly, in the present case, the stock broker has not only acted as the stock broker for both sides (buyer & seller), but in fact he was the client himself on both side of the transactions (in most of the cross deals), which is even more serious. About 95.32% of the stock broker's cross deals were self trades. The stock broker was acting as a stock broker for both the buy and sell clients for the same transaction. In such situation, he cannot take shelter under the plea that he was unaware of the counter party client. As he himself was the client in most of the trades, the plea that he was not a beneficiary is also not acceptable. In the absence of any material or specific submission refuting the allegations, I hold that the stock broker was responsible in executing manipulative trades in the nature of cross deals/self trades/synchronised trades. This kind of a trading pattern had depicted a false picture that the shares of the company were being actively traded in the market. The trades also created misleading appearance of trading the securities market and thus, manipulated the share price of the company. In view of the above, the explanations offered by the stock broker are not convincing enough to support its contention that the trades were placed at the instance of the clients. With respect to the allegation that the stock broker had matched his trades with three other stock brokers, namely Subh Stock Broking Private Limited, Jhunjhunwala & Co. and Deepak Jhunjhunwala & Co., the Enquiry Officer has given the benefit of doubt.

11. The Hon'ble Securities Appellate Tribunal (SAT) in the matter of Ketan Parekh Vs SEBI *inter alia* observed:

"..... Any transaction executed with the intention to defeat the market mechanism whether negotiated or not would be illegal. Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be

available.The nature of the transaction executed the frequency with which such transactions are undertaken, the value of the transactions, whether they involve circular trading and whether there is real change of beneficial ownership, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn.”

12. By indulging in such acts, the stock broker has created false and misleading appearance of trading in the securities of the company at CSE. Further, through such trades, the stock broker could manipulate the price of the securities during the relevant period. The stock broker failed to controvert the findings of the Enquiry Officer. In the facts and circumstances and considering the materials available on record, it is established that the Broker had violated the provisions of Regulations 4(2)(a), 4(2)(e) of the PFUTP Regulations in respect of his dealings in the shares of the company during the relevant period. With respect to the allegation of violating the provisions of Regulation 4(2)(o) of the PFUTP Regulations and Clause B(4)(a) of the Broker Regulations by the stock broker, I find that the investigation and the Enquiry Report had not brought out enough material to show that the stock broker had induced trades in the securities of the company for the sole purpose of enhancing his brokerage or commission. I am therefore inclined to absolve the stock broker of the said charge.

13. Further, the next issue is to be examined whether the Broker had maintained high standards of integrity, promptitude, fairness and exercised due skill, care and diligence in the conduct of his business. In terms of clauses A (1) to (4) of the Code of Conduct specified under the provisions of the Brokers Regulations, a stock broker shall not inter alia create false market or indulge in any act detrimental to the investors' interest or which leads to the interference

with the fair and smooth functioning of the securities market. It is the mandatory duty of a stock broker to maintain high standards of integrity, promptitude and fairness and he shall also act with due skill, care and diligence in the conduct of his business. In the present case, it is already established that the trades of the stock broker created misleading appearance of trading and further led to manipulation of the price of the shares of the company. Instead of maintaining the Code of Conduct the stock broker became a party to such manipulation in the shares of the company to the detriment of genuine investors. An intermediary who fails to perform such mandatory duties deserves to be punished in accordance with law, in the interest of investors in the stock market.

14. In the facts and circumstances, it is established that the stock broker violated the Regulations 4(2)(a) and 4(2)(e) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 and clauses A(1) to A(4) of the Code of Conduct specified under Schedule II of the provisions of Securities and Exchange Board of India (Stock Brokers and Sub- Brokers) Regulations, 1992. Having found the stock broker guilty of the above provisions of the Regulations, the next step would be to decide the penalty that needs to be imposed. I note that SEBI vide order dated November 30, 2005 directed the stock broker amongst others not to buy, sell or deal in securities, in any manner, either directly or indirectly, till further directions. The said order was an ex-parte ad-interim order issued pending *investigation inter alia* in the matter of Adinath Bio-labs Limited. Thereafter, SEBI, vide order dated May 31, 2006 confirmed the directions issued vide its above mentioned order. Thereafter, vide order dated August 11, 2008, SEBI vacated the restraint orders imposed on the stock broker and others, as stated therein. Subsequently, the enquiry proceedings initiated against the stock broker in the said matter was disposed of by SEBI, vide order dated November 28, 2008, as stated therein. Though, the stock broker was restrained from accessing the securities market for the period (November 30, 2005 to August 11, 2008), as stated above, such prohibition was in respect of his dealings in the

shares of another company and not in respect of his dealings in the shares of the company. Therefore, I am not in agreement with the recommendation of the Enquiry Officer to set off the recommended period of penalty (in the present case) against the period of prohibition already undergone by him in terms of the aforesaid orders of SEBI passed in the matter of Adinath Bio-Labs Limited. However, taking into consideration the case in its totality, including the period of prohibition undergone by him in terms of the aforesaid orders of SEBI passed in respect of his dealings in the shares of Adinath Bio-Labs Limited which had taken place more or less during the same period and for which the stock broker had already undergone the prohibition for almost thirty three months, I find it appropriate to dispose of this proceedings, as ordered herein under, in the interests of justice.

15. In view of the foregoing, I, in exercise of the powers conferred upon 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, M/s Dinesh Kumar Lodha {Member, Calcutta Stock Exchange Association Limited (Registration no. INB 030671718)}, for a period of three months.

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

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

Place: Mumbai

Date: March 31, 2009