

**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. S. K. JHUNJHUNWALA, MEMBER, CALCUTTA STOCK EXCHANGE ASSOCIATION LIMITED, IN RESPECT OF ITS DEALING IN THE SHARES OF AKSHAY FISCAL SERVICES LIMITED**

Date of the hearing: May 08, 2009

Appearance:

For M/s. S. K. Jhunjhunwala: : Mr. Pravin Panwar, Authorised Representative

For Securities and Exchange Board of India : Mr. Jayanta Jash, General Manager

Mr. Mrityunjaya Behera, Asst. General Manager

Mr. T. Vinay Rajneesh, Legal Officer

1. The Securities and Exchange Board of India (hereinafter referred to as SEBI) had conducted investigations into the alleged excessive speculative transactions in some of the finance/investment, bio-tech and info-tech companies which were listed at the Calcutta Stock Exchange Association Limited (hereinafter referred to as CSE). Akshay Fiscal Services Limited (hereinafter referred to as the company) was one such company whose shares witnessed widespread speculative trading at CSE. In view of the irregularities, the trading in the shares of the company for the period between July 2001 and October 2001 (hereinafter referred to as the investigation period) was investigated by SEBI to find out the possible violations of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the SEBI Act) and the Regulations framed thereunder.

2. The investigation conducted by SEBI *inter alia* observed that the average share price of the company increased from Rs. 3.20/- to Rs. 47.50/- during the period July 02, 2001 and October 12, 2001. The stock brokers viz. M/s. S. K. Jhunjhunwala, Mukesh Dokania & Co., Dinesh Kumar Modi & Co. and Swadha Securities Private Limited (Members, CSE) were found to have traded substantially in the shares of the company during the above period. Thus, it was

*inter alia* revealed that the stock broker viz. M/s. S. K. Jhunjhunwala (Registration No. INB 030930817) had dealt in the shares of the company allegedly in a manner contravening the provisions of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 (hereinafter referred to as PFUTP Regulations) and the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as the Stock Brokers Regulations). In order to enquire into the alleged violations said to have been committed by M/s. S. K. Jhunjhunwala, an Enquiry Officer was appointed by SEBI, vide order dated September 18, 2004 in terms of the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 [hereinafter referred to as Enquiry Regulations]. Mr. R. K. Choudhary is the proprietor of M/s. S. K. Jhunjhunwala. For the sake of convenience, M/s. S. K. Jhunjhunwala shall henceforth be referred to as the stock broker.

3. After conducting the enquiry in accordance with the provisions of the Enquiry Regulations, the Enquiry Officer *inter alia* found the stock broker guilty of having contravened the provisions of Regulation 7 of the Stock Brokers Regulations read with Clauses A (1), (2) of the Code of Conduct prescribed for stock brokers under Schedule II of the said Regulations and Regulation 4 (a), (b) of PFUTP Regulations. The Enquiry Officer further recommended that the certificate of registration of the stock broker be suspended for a period of six months, vide his Report dated December 19, 2006. On receipt of the Enquiry Report, a notice dated December 28, 2006 was issued to the stock broker advising it to show cause as to why action should not be taken against it, as recommended by the Enquiry Officer or as may be deemed appropriate. A copy of the Enquiry Report was also enclosed along with the said show cause notice. The submissions made by the stock broker, vide letter dated January 13, 2007, are being dealt in the later part of this order. Subsequently, the stock broker had availed an opportunity of hearing before my predecessor on May 23, 2008 and made oral submissions. Thereafter, another opportunity was granted to the stock broker on May 08, 2009. On the said day, the stock broker was represented by its authorised representative Mr. Pravin Panwar. He requested to consider the written submissions filed earlier and pleaded to 'let go' the stock broker with a warning.

4. I have perused the Enquiry Report, show cause notice dated December 28, 2006, the stock broker's reply dated January 13, 2007 and the oral submissions made (on behalf of the stock broker) during the personal hearing. On examination of the aforesaid documents and the submissions of the stock broker, the following issues arise for my consideration:

*a) Whether the stock broker contravened the relevant provisions of the PFUTP Regulations?*

*b) Whether the stock broker contravened the Code of Conduct prescribed for stock brokers under the Stock Brokers Regulations?*

*c) If the stock broker is found guilty of contravening the aforesaid Regulations, what would be the quantum of penalty to be imposed on it?*

5. It is noted that the average share price of the company at CSE had increased from Rs.3.20/- during Settlement No. 2002115 (July 02, 2001 to July 06, 2001) to Rs.47.50/- during Settlement No. 2002129 (October 08, 2001 to October 12, 2001). During the investigation period, a total of 38,11,706 shares of the company were bought and sold at CSE. From the trade data furnished by CSE, it was noticed that the trades of four stock brokers, namely Mukesh Dokania & Co., Swadha Securities Private Limited, S. K. Jhunjhunwala (the stock broker) and Dinesh Kumar Modi & Co. had contributed to nearly 90% of the total volumes traded in the shares of the company at CSE during the relevant period. It was observed during the course of investigation that the aforesaid stock brokers had engaged themselves in executing matched and synchronized trades thereby generating a volume of 67,91,552 shares.

6. The investigation conducted by SEBI found that the stock broker had purchased 8,21,000 shares and sold 1,21,000 shares of the company, which are respectively 22% and 3% of the total shares bought and sold at CSE in the shares of the company in the corresponding period. The total volume traded (both buy and sell) by the stock broker, as per the investigation report was 9,42,000 shares which constituted nearly 12% of the total trading in the shares of the company during the investigation period. The stock broker had traded in settlements 2002119, 2002127 and 2002129. The details of the stock broker's buy and sell for the aforesaid settlements are as below:

| Settlement Number | Date     | Buy Qty.      | Rate (Rs) | Sale Qty.    | Rate (Rs) |
|-------------------|----------|---------------|-----------|--------------|-----------|
| 2002119           | 30/07/01 | 400000        | 1.70      | 0            | 0         |
| 2002119           | 31/07/01 | 300000        | 2.51      | 0            | 0         |
| 2002127           | 25/09/01 | 4000          | 24.50     | 4000         | 24.50     |
| 2002129           | 10/10/01 | 30000         | 44.50     | 30000        | 44.50     |
| 2002129           | 11/10/01 | 40000         | 46.88     | 40000        | 46.88     |
| 2002129           | 12/10/01 | 7000          | 47.50     | 7000         | 47.50     |
| <b>TOTAL</b>      |          | <b>781000</b> |           | <b>81000</b> |           |

7. During the settlements mentioned above, the stock broker had purchased 7,81,000 shares and sold 81,000 shares, a gross volume of 8,62,000 shares. I note that the investigation conducted by SEBI observed that most of the trades of the stock broker in the shares of the company were client to client trades executed on its single terminal. It was also observed that the stock broker had allowed his clients to place both buy and sale orders simultaneously for the same quantity and price. The details of the matched trades executed by the stock broker in the shares of the company were provided to the stock broker along with the show cause notice dated October 04, 2004 issued under Regulation 4 of the

Enquiry Regulations. Besides, the Enquiry Officer, had also observed that majority of the trades executed by the stock broker had been matched with the stock broker itself, where the buying and the selling client belonged to the stock broker. He further observed that on majority of occasions the orders put by the stock broker in the exchange trading system have been matched only with its own clients despite substantial trading activity by other brokers on a single trading day. The Enquiry Officer had elaborated the matched and synchronised trades of the stock broker for certain days, by way of a table, which is reproduced herein below for the sake of reference:

| Date      | Total Shares traded on CSE |        | Total shares Traded by the stock broker |       | Total of matched trades by the stock broker as per trade log | Percentage of matched trades |      |
|-----------|----------------------------|--------|-----------------------------------------|-------|--------------------------------------------------------------|------------------------------|------|
|           | Buy                        | Sell   | Buy                                     | Sell  | Buy                                                          | Sell                         |      |
| 25-Sep-01 | 119000                     | 119000 | 4000                                    | 4000  | 4000                                                         | 4000                         | 100% |
| 10-Oct-01 | 138500                     | 138500 | 30000                                   | 30000 | 30000                                                        | 30000                        | 100% |
| 11-Oct-01 | 158050                     | 158050 | 40000                                   | 40000 | 40000                                                        | 40000                        | 100% |
| 12-Oct-01 | 97500                      | 97500  | 7000                                    | 7000  | 7000                                                         | 7000                         | 100% |

8. The Enquiry Officer had observed that despite the trading activity of the other stock brokers in the scrip, all the trades of the stock broker had matched only with itself and therefore in that manner the stock broker had facilitated its clients to create the volume in the shares of the company without having any delivery obligation. The Enquiry Officer, thus came to the conclusion that significant and concentrated trading in the shares of the company by the stock broker (M/s. S. K. Jhunjhunwala), Mukesh Dokania & Co., Dinesh Kumar Modi & Co. and Swadha Securities Private Limited had resulted in the rise in share price of the company from Rs.3.20/- to Rs.47.50/-.

9. On a perusal of the findings of the investigation (enclosed to the show cause notice dated October 04, 2004), I note that the stock broker had entered into matched and synchronised transactions with Swadha Securities Private Limited and Mukesh Dokania & Co. I also find numerous instances of cross deals (*trades for which the stock broker is common to both the buyer and the seller*) of the stock broker. Besides, on July 30, 2001 the stock broker had matched his buy orders with the sell orders placed by Swadha Securities Private Limited and Mukesh Dokania & Co. In this manner, the stock broker had purchased 4,00,000 shares of the company for its clients on July 30, 2001 and 3,00,000 shares on July 31, 2001. The stock broker contended that the allegations made by the Enquiry Officer would become null and void as out of 8,62,000 shares of the company traded by the stock broker, 7,00,000 shares were purchased by it and that it had not made any corresponding sale. In this regard, I find that the stock broker had been charged with for having entered into matched and synchronised transactions. The fact that the stock broker had purchased 7,00,000 shares of

the company on July 30, 2001 and July 31, 2001 is an admitted fact. The stock broker's plea that it made only purchases and did not sell would have no relevance in the facts and circumstances of the case, as it can be seen that the transactions in 7,00,000 shares of the company were by way of matched and synchronised trades executed between the stock broker and Swadha Securities Private Limited and Mukesh Dokania & Co. The stock broker further contended that it was a mere co-incidence that some of its trades had matched with the trades of other stock brokers and that it had no 'intentional arrangement' with them. I am unable to agree with this contention considering the number of such trades executed by the stock broker. Such large number of trades cannot be matched without a predetermined mind and action. It requires unity of minds amongst the parties involved therein. It can also be seen that for trades which were executed on September 25, October 10, October 11 and October 12, the stock broker was common for both the buyer and seller. In other words, the stock broker had entered into cross deals on the aforesaid days. The execution of trades is not in dispute before me. The intention of the stock broker is so apparent from the nature of the trades executed by it.

10. The stock broker submitted that its total trade volume is 8,62,000 shares and not 9,42,000 shares. I note that from Settlement No. 2002115 to 2002129, the stock broker had traded in 8,62,000 shares. The stock broker further submitted that in July 2001, it had purchased 7,00,000 shares on behalf of its clients but did not sell in that month. In this regard, I find that the said 7,00,000 shares had been purchased by the stock broker by way of matched and synchronised transactions with the stock brokers viz. Swadha Securities Private Limited and Mukesh Dokania & Co. It is pertinent to note that the stock broker had executed cross deals in 81,000 shares. For the cross deals so executed, the stock broker cannot claim ignorance as it was fully aware that it was keying in both the buy and the sell orders for its clients. The pattern of trading by the clients should have alerted the stock broker and it should have questioned the intention of its clients for such transactions, which the stock broker failed to do. The submission of the stock broker that it did not enter into cross deals would be without merit as it has been established that the stock broker had indulged in cross deals in respect of 81,000 shares. In this regard, I also note the submissions of the stock broker, vide letter dated January 13, 2007 wherein it is *inter alia* stated that it had purchased and sold 81,000 shares of the company on the same dates on behalf of its clients. The stock broker's contentions that it did not enter into non-genuine transactions or indulged in manipulative, fraudulent or deceptive transactions have to be dismissed for the reasons stated supra. Thus, after consideration, I find that the submissions of the stock broker are without any merit. I also take note of the fact that the stock broker had admitted (before the Enquiry Officer) that most of the trades in the shares of the company were client to client trades. The stock broker had also admitted that it had matched trades with select stock brokers of CSE. Relevant statements as observed in the Enquiry Report, in brief, are quoted hereinunder:

*"Qn 1. It is alleged that most of the trades in scrip Akshay Fiscal Services Ltd. (AFSL) executed by you during the period under scrutiny are client to client trades which have been executed on a single terminal of the broker. Please explain.*

*Reply: Yes, I agree with the observation."*

11. The stock broker by executing cross deals, matched and synchronised transactions had indulged itself in creating a false and misleading appearance of trading in the shares of the company at CSE. Further, it had indulged in non-genuine transactions resulting in the share price being depressed. By entering into such matched trades which had been squared off, the stock broker had not intended to effect the transfer of beneficial ownership in the shares to the purchasers. Therefore, I have no hesitation in holding the stock broker guilty of having contravened the provisions of Regulation 4 (a) and (b) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995. Needless to say, the stock broker was responsible in the creation of a false market in the shares of the company by indulging in such activities. By indulging in such activities, the stock broker failed to maintain high standards of integrity and fairness in its conduct as is expected from a prudent stock broker and did not act with due skill, care and diligence. Thus, the stock broker has contravened Regulation 7 read with Clauses A (1) and (2) of the Code of Conduct prescribed for stock brokers under the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992.

12. I note that the Enquiry Officer had recommended a major penalty of suspension of the certificate of registration of the stock broker for a period of six months. The investigation conducted by SEBI *inter alia* observed that the stock brokers namely, M/s. S. K. Jhunjhunwala, Mukesh Dokania & Co., Dinesh Kumar Modi & Co. and Swadha Securities Private Limited traded substantially in the shares of the company during the period of investigation. The enquiry proceedings initiated against Mukesh Dokania & Co., Dinesh Kumar Modi & Co. and Swadha Securities Private Limited were disposed of by SEBI and a penalty of censure was imposed on the said stock brokers, by SEBI, vide separate orders dated January 09, 2009. Taking into consideration, the facts and circumstances of the case in its totality, the volumes of cross deals and matched deals executed by the stock broker and the orders passed against the other three stock brokers, the present proceedings is disposed of as ordered hereinunder.

13. I find that the present case has been initiated under the provisions of the 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 the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 anything done and any action taken under the 2002 Regulations (mentioned above) before the publication of the 2008 Regulations (mentioned above) in the Official Gazette are

deemed to have been done or taken or commenced under the corresponding provisions of the 2008 Regulations. Therefore, this order is being passed under the corresponding provisions of the Securities and Exchange Board of India (Intermediaries Regulations), 2008.

14. In view of the foregoing, in exercise of powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 28 (2) of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008, the stock broker viz. M/s. S. K. Jhunjhunwala (Registration No. INB 030930817), Member, Calcutta Stock Exchange Association Limited is hereby warned for its conduct while dealing in the shares of Akshay Fiscal Services Limited and directed to strictly abide by laws, rules and regulations that govern dealings in the securities market .

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

**Place: Mumbai**

**Date: May 28, 2009**