

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 M/S. JAGDAMBAY SHARE BROKERS, SUB-BROKER AFFILIATED TO LSE SECURITIES LIMITED, MEMBER, NATIONAL STOCK EXCHANGE OF INDIA LIMITED

1. Securities and Exchange Board of India (hereinafter referred to as SEBI), vide order dated March 29, 2004 appointed M/s G D Singla & Co. to conduct an inspection of the books of accounts, records and other documents of the sub broker namely, M/s. Jagdambay Share Brokers (hereinafter referred to as the noticee) affiliated to LSE Securities Limited, Member, National Stock Exchange of India Limited (hereinafter referred to as NSE), for the period 2002-2003 & 2003-2004. The inspection, thus, carried out, observed certain deficiencies/irregularities committed by the noticee. The report of the said inspection was forwarded to the noticee by SEBI, vide letter dated August 31, 2004 for its comments. Pursuant to the receipt of the comments from the noticee, SEBI vide order dated February 15, 2005 read with subsequent orders dated December 20, 2005, July 19, 2007 and December 10, 2008 appointed an Enquiry Officer/Designated Officer under the provisions of 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) and Securities and Exchange Board of India (Intermediaries) Regulations, 2008, to enquire into the alleged irregularities/deficiencies

observed during the inspection. As the Enquiry Regulations were repealed with effect from the notification of Securities and Exchange Board of India (Intermediaries) Regulations, 2008, the Enquiry Officer/Designated Authority (hereinafter referred to as the Enquiry Officer) submitted his report dated April 24, 2009 in terms of Regulation 27 of Securities and Exchange Board of India (Intermediaries) Regulations, 2008 and recommended issuance of 'warning' to the noticee. The Enquiry Officer in his Report observed that the noticee violated the following provisions of law/circulars.

- (a) SEBI Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993
- (b) SEBI Circular no. SMDRPD/Policy/Cir-6/2001 dated February 1, 2001.
- (c) SEBI Circular no. SMD/ RCG/CIR/ (BKG)/293/95 dated March 14, 1995.
- (d) SEBI Circular no. SEBI/MRD/SE/Cir-33/2003/27/08 dated August 27, 2003.

2. Subsequently, a notice dated May 1, 2009 was issued by SEBI to the noticee asking it to show cause as to why appropriate action including the penalty as recommended by the Enquiry Officer should not be imposed against it. The noticee was advised to reply to the show cause notice, together with documents that it may choose to rely upon in support of its reply within twenty one days of the receipt thereof. It was also informed that in case of failure, it would be presumed that it had no explanation to offer and SEBI shall be free to take such action in the manner as it deemed fit. A copy of the Enquiry Report was also forwarded to the noticee along with the said show cause notice. The said show cause notice was served on the noticee on May 5, 2009 through the Ludhiana Stock Exchange Limited. As no reply was received from the noticee, another opportunity was provided to it by SEBI, vide letter dated June 02, 2009, which was duly received by it on June 3, 2009. Though, the show cause notice and the subsequent notice were served on the noticee, it had failed to make its submission. Since, sufficient opportunities had been granted to the noticee to

make its submissions, I do not consider it necessary to grant another opportunity to the noticee. Therefore, the present proceedings are being considered on the basis of the available material on record.

3. I have perused the Enquiry Report, the show cause notice issued to the noticee and other material available on record. During the inspection conducted by SEBI, it was observed that the noticee failed to segregate clients' funds and its own funds and that all the transactions were routed through various accounts without any distinction. It was also observed that no records and books of accounts were kept to distinguish client securities from its securities. I note that the noticee did not file any reply before the Enquiry Officer in this regard. In the facts and circumstances, I do not have any hesitation to hold that the noticee violated the provisions of SEBI Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993, which *inter alia* mandates all stock brokers to keep the money of the clients and their own money in separate accounts and also requires them to keep such books of accounts, as may be necessary, to distinguish such securities from their own securities.

4. Further, certain discrepancies in respect of collection of margin, were also observed during the inspection. In one such instance, the margin account which ideally should have only credit balance, had a debit balance of Rs. 4,88,000/- at the end of the year, for which no justification was given by the noticee. As per SEBI Circular ref. SMD/SED/CIR/93/23321 dated November 18, 1993, stock brokers shall buy or sell securities on behalf of clients only on receipt of a minimum margin of 20% on the price of the securities proposed to be purchased or sold. Besides, in terms of SEBI Circular Ref. SMDRP/POLICY/CIR-33/2000 dated July 27, 2000, all the clients excluding Mutual Funds, Financial Institutions, Foreign Institutional Investors etc. have to

maintain a deposit with the stock broker in the form of cash, bank guarantee, Fixed Deposit Receipts or approved securities, which shall not be less than 10% of the net open positions of the client at any point of time. The said requirement was reiterated and to ensure compliance with this requirement, SEBI, vide Circular ref. SMD/RPD/POLICY/CIR-6/2001 dated February 01, 2001, had prescribed that the stock exchanges shall obtain an auditors' certificate to this effect from all brokers on a quarterly basis, who in turn, shall obtain a similar certificate from their sub-brokers. In the absence of any document refuting this charge, I agree with the Enquiry Officer's observation that the noticee violated the provisions of SEBI circulars dated November 18, 1993 and February 01, 2001.

5. Besides, the noticee had indulged in 'off the floor' transactions and had not reported the same to NSE. This is evident in the cases of clients namely, Mr. Sarabjit Ahluwalia, Mr. V.K. Gupta, Varinder Kumar Gupta (HUF), Mr. Shashi Gupta, Mr. Rohit Gupta and Mr. Rahul Gupta wherein transactions had not been routed through exchange mechanism of NSE. Though, the details of the above transactions were provided to the noticee, it chose not to make any submissions at the time of the proceedings before the Enquiry Officer. It is therefore, established that the noticee violated the provisions of SEBI Circular No. SMD/RCG/CIR/(BKG)/293/95 dated March 14, 1995 which requires the reporting of off the floor transactions.

6. The instances of various payments and receipts in cash were also observed in respect of the noticee, which was in violation of SEBI Circular No. SEBI/MRD/SE/Cir-33/2003/27/08 dated August 27, 2003. The said circular *interalia* requires all payments to be made and received strictly by account payee crossed cheques/demand drafts or by way of direct credit into the bank

account through Electronic Fund Transfer (EFT), or any other mode allowed by Reserve Bank of India, It has been further alleged that the noticee had settled the account of various clients on the last day of financial year by paying or receiving cash and then by reversing the same in the next financial year. The noticee failed to submit any reply in respect of said allegation. Thus, I am in agreement with the findings of the Enquiry Officer, and hold the noticee guilty for having violated the provisions of SEBI Circular No.SEBI/MRD/SE/Cir-33/2003/27/08 dated August 27, 2003.

7. As an intermediary functioning in the securities market, the noticee has to abide by the Regulations/Circulars and other directions framed by SEBI which govern its conduct in the securities market. The said provisions are put in place for the smooth functioning of the securities market and for the protection of the interest of the investors. In the present case, as has been detailed above as well as in the Enquiry Report, the noticee had violated various provisions of Circulars framed by SEBI. Further, no effort was taken by it to refute the findings of the Enquiry Officer. It may be noted that the noticee did not avail the opportunity of personal hearing provided to him by the Enquiry Officer. Given the facts and circumstances, I also agree with the recommendation of the Enquiry Officer and the present enquiry proceedings are disposed of as ordered herein under.

8. In view of the foregoing, in exercise of the powers conferred on me under Section 19 of Securities and Exchange Board of India Act, 1992 read with Regulation 28(2) of Securities and Exchange Board of India (Intermediaries) Regulations, 2008, the sub broker namely, M/s. Jagdambay Share Brokers, (Registration No INS010690811) affiliated to LSE Securities Limited (Member, National Stock Exchange of India Limited), is hereby warned for the deviations

observed herein from the provisions of various circulars of Securities and Exchange Board of India which regulate its function as a registered intermediary of Securities and Exchange Board of India. The aforesaid sub broker is directed to strictly abide by laws, rules and regulations which govern its dealings in the securities market.

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

Place: Mumbai

Date: June 25, 2009