

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 CONSORTIUM SECURITIES PRIVATE LIMITED.

Date of Hearing: July 09, 2009

Appearance:

For Consortium Securities Private Limited:

Mr. P.S. Kalra, Chairman

Mr. Madan Mohan Singh, Managing Director

Mr. Bikramjeet Singh Kalra, Authorised Representative

Ms. Deepika Vijay, Authorised Representative

For Securities and Exchange Board of India:

Mr. Amarjeet Singh, Chief General Manager

Mr. Vijayakrishnan G., Deputy Legal Adviser

Ms. Vandana Jindal, Assistant General Manager

Ms. Chhavi Sinha, Legal Officer

1. Securities and Exchange Board of India (hereinafter referred to as SEBI), vide order dated July 11, 2002 appointed M/s G. Jai & Associates, Chartered Accountants, to conduct an inspection of the books of accounts, records and other documents of the stock broker namely, Consortium Securities Private Limited (hereinafter referred to as Broker), Member, National Stock Exchange of India Limited (hereinafter referred to as NSE). The inspection, thus carried out for the period April 01, 2000 to August 31, 2002 observed certain deficiencies/irregularities committed by the Broker. The report of the said inspection was forwarded to the Broker by SEBI, vide letter dated January 23, 2003, for its comments. Pursuant to the receipt of the comments from the

Broker, SEBI, vide order dated December 05, 2003 read with subsequent orders dated August 06, 2004, September 27, 2004 and July 19, 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 (hereinafter referred to as the Enquiry Regulations) 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 As the Enquiry Regulations were repealed with effect from the notification of Securities and Exchange Board of India (Intermediaries) Regulations, 2008, the Enquiry Officer/Designated Authority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 February 03, 2009, in terms of the provisions of Securities and Exchange Board of India (Intermediaries) Regulations, 2008 and recommended the penalty of 'Censure'. The Enquiry Officer *inter alia* observed that the Broker violated the following provisions of law/circulars.

- (a) The provisions of Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993.
- (b) The provisions of Circular no. SMD/POLICY/CIR-12/2002 dated May 17, 2002.
- (c) The provisions of Code of Conduct for stock brokers as specified under Clause A (2) and A (5) of Schedule II read with Regulation 7 of Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992.

2. Subsequently, a notice dated March 12, 2009 was issued by SEBI to the Broker asking it to show cause as to why the appropriate action including the penalty as recommended by the Enquiry Officer should not be imposed against it. A copy of the Enquiry Report was also forwarded to the Broker along with the said show cause notice. Thereafter, the Broker vide letter dated May 5, 2009,

interalia, submitted that the alleged charges of violations framed in the Enquiry Report were merely technical in nature and had not hampered the interest of any investor or client as also agreed by the Enquiry Officer. The Broker contended that there had been clear segregation of clients and own funds and that there had not been any misuse of the funds of the clients. In this regard, the Broker submitted that any amount withdrawn from the client account was strictly against the pending dues from the client to it and the same was in strict compliance of the provisions of the Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993, which permits the withdrawal of amount pending from the clients. Further, with regard to the allegation regarding collection of margin, the Broker contended that it had maintained adequate margins at all times and had never defaulted in the payment of margin calls of NSE and thus had duly complied with the regulatory requirements. In light of the submissions that there has been no violation of the provisions of any of the circulars, the Broker further submitted that it is erroneous to hold that it had violated provisions of Clause A(2) and A(5) of the Schedule II of Code of Conduct specified in Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992. The Broker further argued that Clause A(2) requires a stock broker to act with due skill and care in the conduct of his business and “due skill and care” would mean, at least such care and skill as a man of ordinary prudence and caution would exercise under normal circumstances. The Broker contended that it had at all times ensured the interest of the clients with utmost priority and have taken care that there is no misuse of client’s funds and that it had never defaulted in its exchange obligations. Therefore, the Broker maintained that it is incorrect to say that it had not observed due skill and care and had breached the code of conduct. Further, in respect of Clause A(5), the Broker stated that it had duly complied with all Acts, Rules and Regulations and have clarified that the actions by it had been as per strict interpretation of the provisions in the

spirit of the law. In respect of the quantum of penalty, the Broker relied on the observation made by Hon'ble Securities Appellate Tribunal in Appeal No.39/2002 in the matter of Reliance Industries Limited vs. Securities and Exchange Board of India.

3. Thereafter, an opportunity of hearing was granted to the Broker on July 9, 2009. Mr. Bikramjeet Singh Kalra and Ms. Deepeka Vijay, Authorized Representatives made submissions before me on behalf of the Broker. Mr. P.S. Kalra, Chairman and Mr. Madan Mohan Singh, Managing Director were also present at the time of hearing. The submissions were made on the lines of the reply dated May 5, 2009, of the Broker.

4. I have considered the Enquiry Report, the reply dated May 5, 2009 of the Broker, the oral submissions made on behalf of the Broker at the time of the hearing and other material available on record. One of the violations committed by the Broker, as per the Enquiry Report is that it had contravened the provisions of Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993. The Enquiry Officer observed that the Broker itself admitted the violation of the said circular. The Enquiry officer also observed that the Broker has taken preventive/corrective steps so as to avoid the repetition of the instances as reported in Inspection Report. I observe that SEBI circular dated November 18, 1993 *inter alia* requires the segregation of clients account from the stock brokers account. The aforesaid circular also lists the circumstances under which money can be withdrawn from the 'clients account' or paid into the 'clients account'. The relevant provision of the said circular is reproduced hereinunder:

".....What moneys to be paid into "clients account". No money shall be paid into clients account other than -

i) money held or received on account of clients;

- ii) *such money belonging to the Member as may be necessary for the purpose of opening or maintaining the account;*
- iii) *money for replacement of any sum which may by mistake or accident have been drawn from the account in contravention of para D given below;*
- iv) *a cheque or draft received by the Member representing in part money belonging to the client and in part money due to the Member.*

D] *What moneys to be withdrawn from "clients account". No money shall be drawn from clients account other than -*

- i) *money properly required for payment to or on behalf of clients or for or towards payment of a debt due to the Member from clients or money drawn on client's authority, or money in respect of which there is a liability of clients to the Member, provided that money so drawn shall not in any case exceed the total of the money so held for the time being for such each client;*
- ii) *such money belonging to the Member as may have been paid into the client account under para 1 C [ii] or 1 C [iv] given above;*
- iii) *money which may by mistake or accident have been paid into such account in contravention of para C above....."*

5. It may be noted that the Broker, by his own admission, had first introduced his own funds in the clients' accounts for making pay-in or margin payments and at a later stage, withdrew such money under the garb of 'payment towards payment of a debt due to the stock broker from clients'. The inspection conducted by SEBI observed that though, there were separate bank accounts operated by the Broker for own and client transactions, there were many instances when transactions relating to clients were routed through own (business) accounts of the Broker and on few occasion own transactions were routed through client accounts. Various instances wherein the Broker had made its business transactions through the clients' accounts for the period April 01, 2000 to August 31, 2002 were annexed in the inspection report, a copy of which was already given to the Broker. Similarly, it was also observed that there were various instances wherein receipts from clients accounts were deposited by the Broker in its own (business) account. Such a practice is not in compliance with the spirit of the circular dated November 18, 1993. The said circular also specifies that, when a stock broker receives a cheque or draft representing in

part, money belonging to the client and in part, money due to the stock broker, the stock broker shall pay the whole of such cheque or draft into the clients account and effect subsequent transfer as stated therein. In view of the above, I agree with the findings of the Enquiry Officer that the Broker has violated the provisions of SEBI circular dated November 18, 1993.

6. In respect of the allegation regarding non-collection of margin, the Enquiry Officer observed that the Broker violated the provisions of SEBI Circular no. SMD/POLICY/CIR-12/2002 dated May 17, 2002. The inspection conducted by SEBI observed various instances wherein the Broker had allowed its clients to trade without obtaining sufficient margins. In this regard, the Enquiry Officer observed that the Broker had submitted before him that it could produce documentary evidence in support of its claim that adequate steps were taken to ensure compliance of the said circular. Enquiry Officer also observed that the contention of the Broker is that the omission was during the transitional period. No satisfactory explanation has been provided by the Broker in respect of the violation of the said circular. The said circular is issued as a risk containment measurement in the interest of investors and securities market. As an intermediary, it is the bounden duty of the Broker to comply with the same. The inspection report detailed various such instances where the Broker had violated the above mentioned circular. No effort has been taken by the Broker to controvert the said observations. The argument that the Broker had never defaulted NSE, cannot be accepted in the facts and circumstances of the case. Considering the overall view of situation prevailing in the securities market and need and urgency involved in its protection, non-compliance of risk containment measure put in position could not be considered as a trivial failure of no consequence not to warrant any punitive action. The pertinent factor to be looked into is not whether it had defaulted in its transactions with the Exchange

or not. The core issue here is whether the Broker had collected margin in terms of the circular dated May 17, 2002. Given the facts and circumstances of the case, I do not have any hesitation to hold that the Broker violated the provisions of SEBI circular dated May 17, 2002. This would also indicate that the Broker had failed to act with due skill care and diligence in the conduct of all its business. Thus, the Broker violated Clause A(2) of the Code of Conduct as specified in Schedule II of the Broker Regulations. In terms of Clause A(5) of the Code of Conduct, a stock broker shall *inter alia* abide by the provisions of the Broker Regulations issued from time to time, as may be applicable to him. By violating Clause A(2) of the Code of Conduct, as mentioned above, the Broker has also violated Clause A(5) thereof.

7. The above mentioned violations on the part of the Broker call for a penalty. The Enquiry Officer recommended a penalty of 'Censure' in the matter. I am unable to take a different view, given the facts and circumstances of the case. I note that the present case has been initiated under the provisions of the Enquiry Regulations. Though, the Enquiry Regulations were repealed with effect from the notification of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008, anything done or any action (including enquiry) commenced under the Enquiry Regulations 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. Thus, the present proceeding is disposed of as ordered hereinunder.

8. In view of the foregoing, 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, Consortium Securities Private Limited (Member, National Stock Exchange of India Limited) is hereby censured for the deviations observed herein from the provisions of the circulars and the provisions of Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992 which regulate its function as a registered intermediary of Securities and Exchange Board of India. The said stock broker is directed to strictly abide by laws, rules and regulations that govern dealings in the securities market.

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

Place: Mumbai

Date: July 31, 2009