

**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 AGAINST SUNRISE FINCAP LIMITED**

Date of Hearing: August 04, 2009

**Appearance:**

For Sunrise Fincap Limited: Mr. Keyoor Bakshi, authorized representative

For Securities and Exchange Board of India: Mr. Piyoosh Gupta, General Manager

Mr. Vijayakrishnan G., Deputy Legal Adviser

1. The Securities and Exchange Board of India (hereinafter referred to as SEBI), vide letter dated October 30, 2002 appointed M/s. Singhvi & Mehta, Chartered Accountants to conduct an inspection of the books of accounts, documents and other records of the stock broker namely, Sunrise Fincap Limited (Member, Ahmedabad Stock Exchange Limited) for the period April 2000 to December, 2002. The said inspection was done by the said Chartered Accountants from January 03, 2003 to January 13, 2003. Sunrise Fincap Limited is hereinafter referred to as the Broker. The aforesaid inspection observed certain irregularities/deficiencies on the part of the Broker. The copy of the said inspection report was sent to the Broker by SEBI on April 28, 2003 for its comments. Pursuant to the receipt of the comments, SEBI vide order dated March 10, 2004 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 committed by the Broker. The Enquiry Officer, vide report dated May 18, 2005 recommended for the suspension of the certificate of registration of the Broker for a period of

fifteen days. While recommending such penalty, the Enquiry Officer observed that the Broker had acted as an unregistered sub-broker and also dealt for unregistered sub-brokers.

2. Thereafter, a notice dated May 24, 2005 was issued by SEBI to the Broker requiring it to show cause as to why appropriate penalty including the penalty as recommended by the Enquiry Officer should not be imposed against it. The Broker, vide letter dated June 07, 2005 filed its reply to the said show cause notice. In respect of dealing with unregistered sub-brokers, the Broker *inter alia* stated that, initially the concerned sub brokers had mentioned to it that they would be trading for themselves and not for their clients. The Broker further added that, immediately upon realizing the fact that the said sub brokers were acting as sub-brokers without the certificate of registration, it had gradually discontinued business with them. In respect of the violation of dealing as an unregistered sub broker of C D Integrated Services Limited [Member, National Stock Exchange of India Limited (NSE)], the Broker stated that it had dealt with the said stock broker while its application for registration was pending. It further added that, it had discontinued the said business (dealing as a sub broker) with the aforesaid stock broker as the application filed by it, did not materialize. It further contended that it had not failed to exercise due skill and care in the conduct of its business.

3. Subsequently, an opportunity of hearing was given to the Broker on September 25, 2008. The said hearing was not taken place as the Broker, in the meanwhile filed an application for a consent order in terms of SEBI Circular dated April 20, 2007. The present proceedings were kept in abeyance, in view of the said application filed by the Broker. Thereafter, as the High Powered Advisory Committee, in terms of the above circular, rejected the application filed by the Broker, the proceeding was revived and another opportunity of hearing was provided to the Broker on August 04, 2009 wherein Mr. Keyoor Bakshi, as

authorized by the Broker appeared before me and made submissions. The learned representative made submissions on the lines of the reply of the Broker dated June 07, 2005. He further stated that the irregularities noticed during the inspection were technical in nature and that it had taken steps for reformation. He also stated that C D Integrated Limited is a group company of the Broker and that the Broker had dealt with the aforesaid stock broker pending its application for sub-broker registration. The learned representative also relied upon the orders passed by the Hon'ble Securities Appellate Tribunal (hereinafter referred to as Hon'ble SAT) in the matters of Chona Financial Services Private Limited and Samkit Share & Stock Brokers Private Limited wherein, the Hon'ble SAT had mentioned various orders of SEBI in similar matter where the penalty imposed was only a warning. According to the learned representative, the violations observed by the Enquiry Officer in the present proceedings are similar to those covered under the aforesaid orders and thus, the Broker is entitled for a similar treatment while imposing the penalty.

4. I have considered the Enquiry Report, the oral as well as written submissions made on behalf of the Broker and other material on record. The violations observed in the present case are two. One, the Broker had dealt as an unregistered sub-broker and the second; it had dealt with unregistered sub-brokers. This is an admitted fact. The case of the Broker is that it had dealt as an unregistered sub-broker while its application for registration as a sub broker was pending. During the course of the hearing, the learned representative submitted that C D Integrated Limited is one of the group companies of the Broker. In terms of Section 12 of Securities and Exchange Board of India Act, 1992, *inter alia* no sub-broker shall buy, sell or deal in securities except under, and in accordance with the conditions of a certificate of registration obtained from SEBI. The said requirement was also incorporated under the provisions of Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Rules, 1992 (since repealed). I note that the Enquiry Officer found that the

Broker had *inter alia* violated the circulars of SEBI dated March 14, 1996 and March 31, 1997. It may be noted that, SEBI, vide circular dated March 14, 1996 advised the stock exchanges that *"It is felt that a large number of sub-brokers still are not registered with SEBI and therefore carrying out their activities without any valid legal sanction. SEBI at its end has started returning all incomplete applications directly to the applicants. Those who were already in the business of sub-broking and had applied for registration before 21st May, 1992 are being advised to re-submit their applications complete in all respects within two months failing which it shall be construed that they are acting as sub-brokers without holding certificates of registration in violation of section 12(1) of SEBI Act, 1992. The applicants who had applied after 21st May, 1992, are being advised to stop the business of sub-broking immediately which can be re-started after they are duly registered with SEBI"*. Therefore, the Broker was not supposed to act as sub –broker without obtaining registration from SEBI.

5. Further, vide circular dated March 31, 1997, SEBI advised the stock exchanges that no stock broker shall deal with a person who is acting as a sub broker unless he is registered with SEBI. It was further advised that it shall be the responsibility of the stock broker to ensure that his clients are not acting in the capacity of a sub broker unless he is registered with SEBI as sub broker or is recognized by the stock exchanges as a remisier. Besides, SEBI, vide circular dated January 16, 1998 advised that the members of the stock exchanges who are acting as sub-brokers through the members of other exchanges should obtain certificate of registration from SEBI to act as a sub-broker. It is pertinent to note that, SEBI, vide circular dated January 15, 2001 advised the stock exchanges to inform the stock broker that their sub-brokers are permitted to start business only after clearance and receipt of registration certificate from SEBI.

6. In respect of the second charge, the only contention of the Broker was that it had subsequently stopped dealing with the unregistered sub-brokers. During the course of the hearing, the learned representative while admitting the violations committed by the Broker, stated that the same were technical in nature. In the facts and circumstances, I have no hesitation to hold that the Broker had acted as unregistered sub broker and dealt with unregistered sub-brokers *inter alia* in violation of the provisions of Section 12 of Securities and Exchange Board of India Act, 1992, Rule 3 of Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Rules 1992 (since repealed), SEBI Circulars dated March 14, 1996 and March 31, 1997, as observed by the Enquiry Officer. In respect of the penalty, the learned representative, during the course of the hearing, requested that the Broker is entitled for a similar treatment as was imposed by SEBI in various other cases and which were observed by the Hon'ble SAT in the orders mentioned supra. In the facts and circumstances of the case, I dispose of the present Enquiry proceedings as ordered hereinbelow.

7. 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. As the said Regulation was repealed by the Securities and Exchange Board of India (Intermediaries) Regulations, 2008, this order is being passed under the corresponding provisions of the Securities and Exchange Board of India (Intermediaries Regulations), 2008.

8. In view of the foregoing, in exercise of the powers conferred upon me under 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, the stock broker namely, Sunrise Fincap Limited (Registration No.INB020923335) Member, Ahmedabad Stock

Exchange Limited is hereby strictly warned for deviating, as observed herein, from the provisions of the Securities and Exchange Board of India Act, 1992 and the Rules and Circulars framed thereunder, which regulate its function as a registered intermediary of Securities and Exchange Board of India. The said stock broker is further directed to strictly abide by the laws, rules and regulations that govern its dealings in the securities market.

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

**Place: Mumbai**  
**Date: August 07, 2009**