

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 AGAINST SUBH STOCK BROKING PRIVATE LIMITED IN RESPECT OF ITS DEALINGS IN THE SHARES OF RADIANT FINANCIAL SERVICES LIMITED

Dates of Hearing: May 8, 2009 and August 5, 2009

Appearance:

For Subh Stock Broking Private Limited: Mr. Pawan Kayan, Director

For Securities and Exchange Board of India:

Mr. Jayanta Jash, General Manager

Mr. Vijayakrishnan G., Deputy Legal Adviser

Mr. Mrityunjaya Behera, Assistant General Manager

Mr. T. Vinay Rajneesh, Legal Officer

1. It was brought to the notice of Securities and Exchange Board of India (hereinafter referred to as SEBI) that shares of some illiquid companies listed at Calcutta Stock Exchange Association Limited (hereinafter referred to as CSE), 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 during the period January 1, 2004 to February 28, 2005 (hereinafter referred to as the investigation period). Thereafter, SEBI initiated investigation into the dealings in

the shares of such companies which included Radiant Financial Services Limited (hereinafter referred to as the company). The investigation conducted by SEBI *inter alia* observed that the share price of the company had witnessed a sharp rise between January 1, 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%. It was noticed that stock brokers viz. M/s Dinesh Kumar Lodha, Subh Stock Broking Private Limited (hereinafter referred to as the Broker), M/s S. Jhunjhunwala & Co. and M/s Deepak Jhunjhunwala & Co. traded substantially in the shares of the company and that their cumulative trades accounted for 98.23% of the total (buy and sell) transactions in the said shares at CSE during the investigation period. It was *inter alia* alleged that the transactions of the Broker, were not genuine and were *inter alia* designed to create false and misleading appearance of trading in the shares of the company. The Broker was alleged to have contravened 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 the PFUTP Regulations) and clauses A(1), A(2), A(3), A(4) and B(4)(a) of the Code of Conduct prescribed for stock brokers under Schedule II of the Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992 (hereinafter referred to as the Broker Regulations). 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 Broker. The Enquiry Officer/Designated Authority (hereinafter referred to as the Enquiry Officer) submitted the Enquiry Report dated January 28, 2009 under the provisions of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 and found the Broker guilty of contravening

the provisions of the PFUTP Regulations and the Broker Regulations as alleged against it, except Clause B(4)(a) of the Code of Conduct. The Enquiry Officer recommended the suspension of the certificate of registration of the Broker for a period of four months. Pursuant to the submission of the Enquiry Report, a notice dated January 28, 2009 was issued by SEBI to the 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 against it. A copy of the Enquiry Report was also forwarded to the Broker with the said show cause notice. In reply, the Broker, vide letter February 11, 2009 *inter alia* stated that in respect of some of the sell trades, since its clients had already identified purchasers for their shares and since the said purchasers happened to be its clients, it had executed cross deals in respect of such trades. In respect of the cross deals executed on March 4, 2004, the Broker stated that the seller was Mr. Binay Kayan (1,26,000 shares) and the buyers were Mangalam Equity Management Private Limited, Sunflower Commerce Limited, Ms. Kavita Kayan and Shreemata Finance Private Limited. The Broker also submitted the photocopies of contract notes issued in favour of its clients. The Broker contended that, though it had executed cross deals, the same were on behalf of different clients who had physically sold and purchased shares and taken delivery of shares in demat and further settled their respective payment obligations. According to the Broker, it had also executed cross deals on other occasions during the investigation period on behalf of the following clients namely:

- i. P.K.C. Commodities Limited
- ii. Covered Sell Transactions
- iii. Jaydeep Barter
- iv. South India Private Limited

2. Thereafter, an opportunity of hearing was granted to the Broker on May 8, 2009. On the said date, Mr. Pawan Kayan, director of the Broker appeared before me and made submissions on the lines of the reply of the Broker. I note that, Mr. Pawan Kayan, in his statement on oath to the investigating authority of SEBI admitted that he was also a director of the company. The contention of the Broker was that the most of the cross deals executed by it on March 4, 2004 were on behalf of its clients. The Broker had also provided the copies of the contract notes in order to substantiate the said claim. As the name of scrip mentioned in the said contract notes bears Rohan Finance instead of the company, the Broker was further advised to give its clarification in the matter. There was also delay in delivery of shares. The Broker, vide letter dated May 12, 2009 while admitting the error in the name of the scrip mentioned in the contract notes, *inter alia* stated that except the scrip name, other details appearing in the contract notes are exactly matching with CSE records, in respect of the trades. According to the Broker, the name of Rohan was erroneously mentioned instead of the company's name in the contract note. The Broker also submitted photocopies of confirmatory letters received from the respective clients stating that they had traded in the shares of the company and not in Rohan Finance. The Broker contended that during the relevant period 2003-2004, it had no transactions in the shares of Rohan Finance. In respect of the delay, the Broker stated that the shares were delivered to the clients after 5 to 6 days.

3. As, I was *prima facie* not satisfied with the findings of the Enquiry Officer in respect of the alleged matched trades of the Broker, for which a benefit of doubt was given by the Enquiry Officer, a subsequent notice dated June 16, 2009 was issued to the Broker by SEBI advising it to show cause as to why the cross/matched deals executed by are not *prima facie* in violation of Regulations 4(2)(a), 4(2)(e) and 4(2)(o) of the PFUTP Regulations. The Broker, vide letter

dated June 23, 2009 *inter alia* denied that, its trades had created false and misleading appearance. The Broker stated that, out of the total quantity of 2,53,202 shares traded between February 11, 2004 to March 2004, the trades for maximum quantity (2,52,002 shares) were on March 4, 2004. According to the Broker, the said transactions were genuine. The Broker has not given any specific submissions in respect of its synchronised trades. While reiterating its earlier submissions, the Broker stated that it had not violated the provisions of law as alleged. Thereafter, another opportunity of hearing was granted to the Broker on August 5, 2009, wherein Mr. Pawan Kayan represented the Broker and made submissions on the lines of the replies of the Broker.

4. I have considered the Enquiry report, the show cause notices issued to the Broker, oral as well as written submissions made on behalf of the Broker and other material available on record. On consideration of the same, the question that needs to be determined is whether the Broker contravened the relevant provisions of the PFUTP Regulations and the Broker Regulations, as alleged against it, while dealing in the shares of the company during the investigation period. It was *inter alia* alleged that:

- a. Most of the trades in the shares of the company during the investigation period were 'client to client' trades which have been executed on a single terminal of the same stock broker.
- b. The said stock brokers (mentioned in para 1 of this order) had allowed their clients to place simultaneously both buy and sell orders of same quantity at the same price in the shares of the company which led to the price rise.
- c. Instances of matching trades between the said stock brokers among themselves indicated that the trades were identical in all respects i.e quantity, rates and time (within a gap of few seconds).

5. The fact that the share price of the company had increased from Rs.1.95/- on February 16, 2004 to Rs.225/- on February 25, 2005 is not in dispute. Besides, the Broker admitted the trades executed by it in the shares of the company during the investigation period. The contention of the Broker is that all his trades were genuine and on behalf of its clients (on most of the occasions). The total volume in the shares of the company at CSE during the investigation period was 1,18,58,944 shares. The details of trades executed by M/s Dinesh Kumar Lodha, the Broker, M/s S. Jhunjhunwala & Co. and M/s Deepak Jhunjhunwala & Co. in the shares of the company during the said period are given below:

Name of the stock broker	Buy and Sell Volumes (number of shares)
Dinesh Kumar Lodha	64,76,450
Broker	23,18,756
S. Jhunjhunwala & Co.	19,24,715
Deepak Jhunjhunwala & Co.	9,29,550

6. The trades of the Broker constituted for 19.60% of the total volume in the shares of the company at CSE and the said details are given below:

Trade Data					
No. of shares bought	% to Total Buy	No. of shares sold	% to Total Sell	Total no. of shares	% to Total Buy & Sell
4,28,754	7.2%	18,90,002	31.90%	23,18,756	19.60%

7. The Broker had also executed cross deals and synchronised deals while trading in the shares of the company during the period of investigation, as given below:

Name of the stock broker	Cross and Matched transactions							
	Subh Stock Broking Private Limited (Broker)		M/s Dinesh Kumar Lodha		M/s S. Jhunjhunwala & Co.		M/s Deepak Jhunjhunwala & Co.	
	Qty	%	Qty	%	Qty	%	Qty	%
Subh Stock Broking Private Limited (Broker)	2,58,804	11.06%	200	0.009%	13,37,950	57.70%	6,53,800	28.20%

8. The above details would establish that about 97% of the total trades of the Broker were either through synchronised or cross deals. The Broker executed number of cross deals/synchronised trades in the shares of the company continuously and consistently during the investigation period. Details of such trades were provided to the Broker along with the show cause notice issued by the Enquiry Officer. As the Broker has not controverted the execution of such trades, I do not consider it necessary to reproduce the same in this order. The Broker has not denied the execution of cross deals. These trades were executed from the same terminal of the Broker. In the facts and circumstances, the execution of cross deals for substantial number of shares would establish the manipulative intent. He is a necessary party to such trades as the buyer and seller execute the trades through it. The Broker was found to be the counterparty to his own trades and was executing both buy and sell orders of identical volume and price. He acted as a client on both sides (buy and sell). One such instance of the Broker's trade was that on February 11, 2004, the Broker had placed a buy order for 100 shares at a price of Rs. 3/- at 11:02:01 a.m. Within few seconds, it placed a sell order for 100 shares at 11:02:04 a.m that matched with his buy order placed earlier. Similarly, on

February 12, 2004, the Broker executed a trade at the price of Rs. 2.60/- for which he himself was the buyer and seller. Admittedly, the Broker had also executed self trade in the shares of the company. The Broker executed number of trades and was able to create the volume in the shares of the company without the transfer of beneficial ownership which created misleading appearance of trading. It was also noticed that on March 4, 2004, the Broker created substantial volume in the shares of the company. It was observed that, the Broker had placed 15 buy orders for a total quantity of 1,26,001 shares and 17 sell orders for 1,26,001 during 10:14:24 a.m. to 10:17:01 a.m. The continuous placement of simultaneous orders (buy and sell) clearly indicate the necessary involvement of the Broker in the execution such trades.

9. The Broker, vide letter dated February 11, 2009 stated that, the trades on March 4, 2004 were executed on behalf of the clients namely, Mr. Binay Kr. Kayan, Mangalam Equity Management Private Limited, Sunflower Commerce Limited, Ms. Kavita Kayan and Shreemata Finance Private Limited. The Broker admitted that Mr. Binay Kr. Kayan was the seller (1,26,000 shares) and others were the buyers. The Broker had split the above sell order of 1,26,000 shares into various smaller quantities and placed the same continuously within a gap of few minutes. The pertinent factor is that, among the aforesaid clients of the Broker, clients namely, Sunflower Commerce Limited, Ms. Kavita Kayan and Shreemata Finance Private Limited shared the same address i.e P-355, Keyatala Road, Kolkata-700029. Besides, one of the clients (which had traded in the shares of the company) of the Broker namely P.K.C. Commodities Limited was also having the above address. Mr. Pawan Kayan who was a director of both the Broker and the company in his statement on oath before the investigating authority of SEBI deposed that Mr. Binay Kr. Kayan who had sold 1,26,000 shares of the company through cross deals on March 4, 2004, is his brother. He also admitted that Ms. Kavita Kayan (one of the buyers of March 4,

2004 cross deals) is related to him. The investigation conducted by SEBI also observed that Mr Pawan Kayan and Ms. Kavita Kayan were the promoters/directors of the company having their address at 21 B, Regent Park Kolkata-700040. Mr Pawan Kayan also deposed that Mr Ankit Kayan and Mr. Abhishek Kayan (promoter/director of the company) are his nephews. This would establish the close nexus that existed between various clients of the Broker for whom it had executed cross deals. The intention of the Broker in making large number of orders makes it evident that the same were intended to create misleading appearance of trading in the securities. The facts and circumstances of the case, as explained above would clearly establish that the cross deals of the Broker were not genuine and were *inter alia* intended to create false misleading appearance of trading. Thus, the Broker manipulated the price of the securities as it was simultaneously trading on both side (buy and sell) continuously and thereby established artificial share price. This proves that the trades of the Broker were artificial which created false and misleading appearance of trading in the scrip.

10. It was also alleged that the Broker had executed number of synchronised trades in the shares of the company during the investigation period and that the Broker had raised the share price on daily basis. The details of the Broker's synchronised trade *vis a vis* the increase in the share price is given below.

Date	Previous day Closing price(Rs)	Closing Price (Rs)	Exchange volume	Volume created by the Broker	% Increase in share price
23.11.04	5.00	5.50	74400	34500	10.0
24.11.04	5.50	6.10	43600	23600	10.9
25.11.04	6.10	6.75	62000	15000	10.7
29.11.04	6.75	7.50	86200	43100	11.1
30.11.04	7.50	7.85	43000	21500	4.7
01.12.04	7.85	8.70	18000	9000	10.8

Date	Previous day Closing price(Rs)	Closing Price (Rs)	Exchange volume	Volume created by the Broker	% Increase in share price
2.12.04	8.70	9.25	23000	11500	6.3
08.12.04	8.70	9.75	20000	10000	12.1
09.12.04	9.75	10.80	11398	5000	10.8
10.12.04	10.80	11.90	13400	6700	10.2
14.12.04	11.90	13.30	13000	6500	11.8
15.12.04	13.30	14.90	11600	5800	12.0
16.12.04	14.90	16.90	64400	500	13.4
17.12.04	16.90	18.80	200000	100000	11.2
23.12.04	18.60	19.10	53000	26500	2.7
4.01.05	18.35	19.55	24300	250	6.5
10.01.05	24.60	27.90	200	100	13.4
11.01.05	27.90	31.45	200	100	12.7
28.01.05	54.00	61.90	3015	1500	14.6
4.02.05	104.00	117.50	80800	40000	13.0
09.02.05	151.90	172.50	42000	21000	13.6
10.02.05	172.50	185.80	48000	21000	7.7
11.02.05	185.80	194.50	86400	40600	4.7
14.02.05	194.50	198.50	103000	20000	2.1

11. Details of synchronised trades executed by the Broker were provided to the Broker. Some of the major clients of the Broker were Mangalam Equity Management Private Limited, Mangalam Viniyog Private Limited, P.K.C. Commodities Limited, Sunflower Commerce Limited and M/s Jaydeep Barter Private Limited. As stated earlier, most of these clients shared the same address. It is noted that most of the volume in the shares of the company during the investigation period was created by the Broker for and on behalf of the said clients, most of them were connected to each other. The trades of the Broker caused price fluctuation in the shares of the company. The Broker was involved in substantial number of continuous and consistent synchronised trades. Such large number of synchronised trades cannot be said to be a co-incidence. It involves pre-conceived meeting of minds among the clients and the Broker. It is obvious that the Broker was creating false volumes by buying and selling

shares at the same time through the exchange mechanism. In the process, they manipulated the share price of the company artificially, as stated above. In this connection, the observation of SAT in the matter of Triumph International Finance Ltd. Vs SEBI is very relevant and the same is reproduced as follows: "It must not be forgotten that every trade establishes the price of the scrip and when two brokers punch in the buy and sell orders simultaneously at a predetermined price which they fix and match the trades on the screen of the system they are obviously interfering with the fair price discovery process of the exchange and this would amount to manipulation and benchmarking the price. Such trades are prohibited by the unfair trade practices regulations framed by the Board". The enquiry proceeding initiated against the stock broker namely, M/s Dinesh Kumar Lodha was already disposed by SEBI, vide an order dated March 31, 2009, by which the certificate of registration of the said stock broker was suspended for a period of three months. In the absence of any specific submission refuting the allegations, I hold that the Broker was responsible in executing manipulative trades in the nature of cross deals/self trades/synchronised trades in the shares of the company. The trading pattern of the Broker had depicted a false picture that the shares of the company were being actively traded in the market. The Hon'ble Securities Appellate Tribunal 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. In the above facts and circumstances, the transactions executed on behalf of the clients who were closely connected to the Broker as well as the company cannot be a coincidence and the same would not have been possible without a pre determined mind to execute the same with the price, quantity of shares matching in respect of the buy and sell orders. Such synchronized deals involving Broker, the director of which was also the director of the company and his relatives, pre supposes its active participation. The Broker failed to controvert the findings of the Enquiry Officer.

13. The series of trades in the form of synchronized trades would only lead to the finding that the said trades executed by the Broker were done with the purpose of manipulating the shares of the company to the detriment of the genuine investors. It amply demonstrates that the Broker, instead of adhering to the Code of Conduct as expected of a SEBI Registered intermediary, practically became a party to the manipulation in the shares of the company. Being an intermediary operating in the securities market, a stock broker is required to maintain high standards of integrity, promptitude and fairness in the conduct of the business dealings as specified in the Code of Conduct of the Broker Regulations (mentioned above). An intermediary who fails to perform such duties has to be punished in accordance with law.

14. A cumulative analysis of the facts of the case, clearly indicate that the Broker did not act in a bonafide manner. On the contrary, the above facts highlight its complete participation in the manipulation in the shares of the company with the connivance of its director who happened to be one of the promoters/directors of the company and his relatives (one of whom again was found to be the promoter/director of the company). The Securities Appellate Tribunal in the matter of Gaurav Shah Vs Whole Time Member, SEBI, had *inter alia* observed “When the promoters of a company through their own front entities start manipulating their own scrip, the charge is more serious and those who act in concert with them are equally responsible.” Therefore, I am not in agreement with the findings of the Enquiry officer in granting benefit of doubt to the Broker in respect of its synchronised trades. According to the Broker, the name of Rohan Finance was erroneously mentioned instead of the company's name in the contract note. 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 Broker, I am inclined to give benefit of doubt to the Broker for want of enough material to show that the Broker had induced trades in the shares of the company for the sole purpose of enhancing its brokerage or commission.

15. Further, the next issue to be examined is whether the Broker had maintained high standards of integrity, promptitude, fairness and had 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.

16. In the facts and circumstances, it is established that the stock broker violated the provisions of 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. Accordingly, the present enquiry proceeding initiated against Subh Stock Broking Private Limited in respect of its dealings in the shares of Radiant Financial Services Limited is disposed of as ordered hereinbelow, in terms of the provisions of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.

17. In view of the foregoing, I, 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, hereby, suspend the certificate of registration of the stock broker, Subh Stock Broking Private Limited {Member,

Calcutta Stock Exchange Association Limited (Registration no. INB 030707437)
for a period three months.

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

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

Place: Mumbai

Date: October 28, 2009