

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER REGULATION 28(2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATION, 2008 AGAINST M/S. S. R. UPPAL & CO. IN RESPECT OF ITS DEALING IN THE SHARES OF CLASSIC GLOBAL IMPEX LIMITED (NOW KNOWN AS DEVINE IMPEX LIMITED)

1. The Securities and Exchange Board of India (hereinafter referred to as SEBI) had conducted investigations into the dealing in the shares of Classic Global Impex Limited, now known as Devine Impex Limited (hereinafter referred to as the company) for the period 1997-1999 pursuant to an appraisal report from the Income Tax Department in respect of their 'search and seize' operation on June 24, 1999 at the premises of the company, its Managing Director, Mr. Nagesh Agarwal and other related entities including M/s. Neeraj Agarwal & Co. (now known as M/s. Aniket N Agarwal & Co.). The said report of the Income Tax Department mainly focused on ascertaining capital gains/losses engineered by various entities through certain members of The Ludhiana Stock Exchange Limited (hereinafter referred to as LSE) while dealing in the shares of the company. The finding of SEBI revealed that the shares of the company were illiquid at LSE during 1997 to 1999 and that, few stock brokers of LSE including M/s. S.R. Uppal & Co. (hereinafter referred to as the Broker) had contributed significant volumes in the shares of the company. It was found that the shares were shown to have been bought at Rs.2/- to Rs.3/- and were then shown to be sold at Rs.30/- to Rs.35/-. The said transactions which yielded capital gains were used by the trading clients to set off other losses. The concerned stock brokers including the Broker were alleged to have provided

dummy contract notes with distinctive numbers without any trades actually entered into by them, for commission from the clients. It was found that such fictitious contract notes were used by the persons/entities to claim capital gains/losses from the Income Tax Department. On the basis of the findings of the investigation, it was alleged that the Broker had failed to maintain high standards of integrity, promptitude and fairness in the conduct of its business and thereby had *prima facie* violated Clause A(1) of the Code of Conduct for stock brokers specified under Schedule II of Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992 (hereinafter referred to as the Stock Brokers Regulations).

2. In view of the above, an enquiry was initiated by SEBI vide Order dated June 17, 2004 and subsequent Orders dated July 19, 2007, January 30, 2008 and August 7, 2009, against the Broker under the provisions of the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (since repealed) read with Regulation 13 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). The Enquiry Officer submitted his report dated October 30, 2009 in terms of the provisions of Securities and Exchange Board of India (Intermediaries) Regulations, 2008 and while finding the Broker guilty of contravening Clause A (1) of the Code of Conduct for stock brokers prescribed under Schedule II of the Stock Brokers Regulations, recommended that the certificate of registration of the Broker be suspended for a period of one month. Thereafter, a notice dated November 10, 2009 was issued by SEBI to the Broker enclosing therewith the said Report, requiring it to show cause as to why the penalty recommended by the Enquiry Officer should not be imposed against it. The Broker failed to submit its reply to the said notice, so far. Subsequently, an opportunity of personal hearing was granted to

the Broker on November 26, 2009, who however did not avail of the same. I note that the Broker had received the letter dated September 3, 2009 issued by the Enquiry Officer calling upon the Broker to file written submissions. While acknowledging the said letter, the Broker stated that its reply remained the same as given earlier to SEBI. After being satisfied that the Broker did not wish to add anything in defence, the Enquiry Officer then proceeded with the enquiry based on the material available on record. I note that the Broker had failed to reply to the post enquiry show cause notice and also failed to make submissions in respect of the finding against it in the Report. Further, the Broker had also failed to appear before me for the personal hearing. In view of the aforesaid facts, I am of the view that further opportunities would serve no purpose. Therefore, I am constrained to consider the case on its merits based on the Report and other documents available on record.

3. The charge against the Broker is that it had issued fictitious contract notes showing rates of the share price of the company to persons/entities in respect of securities transactions which had not taken place, in contravention of Clause A(1) of the Code of Conduct prescribed for stock brokers under the Stock Brokers Regulations. In this regard, I note that the shares of the company have been illiquid for the period 1997-1999. However, the records of certain stock brokers of LSE including that of the Broker was showing that the shares of the company were traded in large numbers for certain entities. The trades purportedly executed for those entities were shown to have been purchased at Rs.2/- to Rs.3/- and then sold at Rs.30/- to Rs.35/-, making capital gains. It has been observed that one Naresh Kumar had shown capital gains through such fictitious trades. He had shown to have made long term capital gains to the tune of Rs.15 lakhs, which had been used for constructing a house and for claiming exemption under Section 54F of the Income Tax Act, 1961. He had admitted before the Income Tax Department that he had obtained purchase bills from

M/s. Ashok Makkar & Co. and M/s. S.K, Sharma & Co. (stock brokers) for the purported purchase of 42,000 shares of the company on January 20, 1998 and 38,000 shares on April 21, 1998 at the rate of Rs.2/- . Mr. Naresh Kumar had also obtained sale bills in respect of 42,000 shares sold on March 15, 1999 from M/s. P.K. Khanna & Co. and from the Broker in respect of the 22,300 shares sold on April 26, 1999 and May 18, 1999 at prices ranging from Rs.25/- to Rs.28/-. In respect of the same, Mr. Rakesh Uppal (son of Mrs. Sunita Rani Uppal, the proprietor of the Broker) had stated before the Income tax Department that Mr. Naresh Kumar had approached it and requested to issue a sale bill for about Rs.6 lakhs to show sale of shares of the company. He further stated that Mr. Naresh Kumar was carrying a list of 22,300 shares with distinctive numbers and that he had already arranged a purchase bill from M/s. Ashok Makkar & Co. Mr. Rakesh Uppal had also stated that no transactions in the shares of the company had actually happened. It was also stated that cheques for Rs.6 lakhs were issued to Mr. Naresh Kumar against the receipt of cash to the tune of Rs.6 lakhs from Mr. Naresh Kumar. It is seen that no real transactions in the shares of the company had happened. Only entries were made and cheques were issued against cash receipts by the Broker to give a false impression that trades had been done. The Broker had admitted the same and has not refuted the same at any stage of this proceeding.

4. Similar *modus operandi* was seen in respect of Mr. Tarsem Lal Sood also. The Broker had issued fictitious contract notes/bills to the said person and has admitted that trades of Mr. Tarsem Lal Sood had never happened and that only book entries were made. Cheques were issued against cash receipts by the Broker to give an impression that actual transactions had taken place. Thus, from the above, I find that the Broker had issued contract notes/transaction bills for transactions which never took place. The same had facilitated the

persons/entities to use them as documents for either claiming tax exemptions and evade payment of tax to the Income Tax Department.

5. In view of the above, from the material available, it is concluded that the Broker had issued contract notes/bills for trades which never really happened. Such bills were fictitious bills issued to entities who had used the same for their own interests in claiming exemption under the Income Tax Act, 1961. The aforesaid conduct of the Broker is a grave violation. Clause A (1) of the Stock Brokers Regulations prescribes that “.....A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.” By indulging in such acts, the Broker had failed to maintain the high standards of integrity and fairness as expected from it. Such conduct on the part of a stock broker who has a major role to play in the securities market undermines the trust reposed on it and the integrity of the system. Thus, I have no reason to differ from the findings of the Enquiry Officer. I note that the Enquiry Officer had recommended that the certificate of the Broker be suspended for a period of one month for the said violations. The same appears to be reasonable and commensurate with the violations which stand established. I note that the present case has been initiated under the provisions of Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002. Since, the said Regulations was repealed with effect from the notification of 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. The present proceeding is thus disposed of as ordered herein below.

6. In view of the foregoing, I, 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 hereby suspend the certificate of registration granted to M/s. S.R. Uppal & Co. [Registration No.INB120712219], Member, The Ludhiana Stock Exchange Limited, for a period of one month.

7. 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: November 30, 2009