

WTM/KMA/NRO/IVD/226/02/2010

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) REGULATION, 2008 AGAINST M/S. ASHOK MAKKER & CO. IN RESPECT OF ITS DEALING IN THE SHARES OF CLASSIC GLOBAL IMPEX LIMITED (NOW KNOWN AS DEVINE IMPEX LIMITED)

Date of Hearing: February 19, 2010

Appearance:

For M/s Ashok Makker & Co.

: Mr. Ashok Makker, Proprietor

For Securities and Exchange Board of India ; Mr. Vijayakrishnan G., Deputy Legal Adviser

Mr. Rakesh Bhanot, Assistant General Manager

Ms. Chhavi Sinha, Legal Officer

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 findings of SEBI was that the shares of the company were illiquid at LSE during 1997 to 1999 and that, a few stock brokers of LSE including M/s. Ashok Makker & Co. (hereinafter referred to as the Broker) were showing significant volumes in the shares of the company in their books. 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 purported transactions which showed such capital gains were used by the clients to set off other losses. The concerned stock brokers including the Broker were alleged to have facilitated and prompted such fictitious activities and thus, had failed to maintain high standards of integrity, promptitude and fairness in the conduct of its business, thereby contravening 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). In view of the above, SEBI vide order dated June 17, 2004 read with subsequent orders appointed an Enquiry Officer to enquire into the alleged violations committed by the Broker. The Enquiry Officer submitted his report dated November 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 three weeks. Thereafter, a notice dated December 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 was also advised to appear for a hearing before me on January 8, 2010. Though, the said letter was acknowledged by the Broker, no response was received from it. Thereafter,

another opportunity of hearing was granted to the Broker on February 19, 2009. Mr. Ashok Makker, proprietor of the Broker appeared before me and submitted that the Broker is not doing any stock broking business for the past several years. He did not deny the findings of the Enquiry Officer.

2. I have considered the Enquiry report, the submissions made on behalf of the Broker during the course of hearing and other material available on record. The charge against the Broker is that it had issued contract notes for fictitious entries to enable the clients to claim capital gain benefit, thereby violating Clause A(1) of the Code of Conduct. The investigation conducted by SEBI observed that certain stock brokers including the Broker had made false entries in their books regarding the trades in the shares of the company when no such trades had actually taken place. As per their books, they had bought the shares at Rs.2/- to Rs.3/- and were then shown to be sold at Rs.30/- to Rs.35/-, thereby purporting to have made capital gains. The Broker has not denied the allegation that it had issued bills for purchase and sale of the shares of the company in favour of Mr. Naresh Kumar Gupta and Mr. Ravinder Kumar. Mr. Naresh Kumar Gupta in his statement before Income Tax Authorities on September 16, 1999 had stated that he needed some investment for the construction of a residential house and was advised by one of his friends that if the same was out of Long Term Capital Gains then he would not have to pay any tax on the said investment. It was also observed that Mr. Naresh Kumar Gupta had stated that as per the said advice, he contacted Mr. P. K. Khanna (member, LSE) and told him that he needed an amount of Rs.14 to Rs.15 Lacs in the form of Long Term Capital Gains. As per the alleged understanding between Mr. Naresh Kumar Gupta and Mr. P.K. Khanna, Rs.81,200/- was paid in cash (approximately) for which he was given a purchase bill by the Broker showing purchase of the shares of the company, without any actual purchase of shares. These facts were also mentioned in the Enquiry Report. As per the contract note issued by

Broker, it was *inter alia* found that one Ravinder Kumar had sold 19,500 shares of the company at Rs. Rs.27.90 per share to the Broker. The copies of those bills were found in the business premises of M/s. Neeraj Aggarwal & Co. (Member, LSE). However, Mr. Ravinder Kumar stated before the Income Tax Department that he had not dealt in any share of the company. In the absence of any specific denial by the Broker regarding the issuance of such bills, I hold the Broker liable for issuing contract notes for trades which were never executed. I also note that during the course of investigation, the Broker was advised to comment in respect of the contract notes issued by it to one Sudarshan Kumar, who allegedly bought 8,500 shares of the company at Rs.2.30 per share on September 17, 1999 and then sold them on March 18, 1999 at Rs.25.65 per share. No comments were offered by the Broker in respect of the same.

3. The show cause notice issued during the enquiry had mentioned that the Broker had admitted before the Income Tax authorities that all the transactions in the shares of the company for the financial years 1998-99 and 1999 for 3,51,900 shares and 1,21,800 shares respectively were mere paper transactions. No purchase/sale and no physical delivery were ever made. The Broker had not denied the same. I note that it had also stated before Income tax authorities “... *It is further clarified here that in respect of purchase bills issued to different persons (the parties from whom I have shown purchases at higher rates) to whom payments have been made through cheques/DDs, the cash was received from these respective parties and cheques/DDs were issued to them for the amounts shown in the purchase bills...*”. As a prudent intermediary, a stock broker should not have indulged in such practices. It is clearly established that the Broker had issued fake contract notes to its clients. This very act of the Broker violates the Code of Conduct specified for stock brokers, as found by the Enquiry Officer. In the facts and circumstances as stated above, the only conclusion that can be drawn is

that the Broker entered into such activities and admittedly issued contract note for transactions which were never executed. Such bills were fictitious and were issued to entities who had used the same for their own interests in claiming exemption under the Income Tax Act, 1961. Such acts of the Broker who has an important role in the securities market, undermines the trust reposed on it and jeopardize the integrity of the system.

4. Thus, the Broker had failed to maintain high standards of integrity, promptitude and fairness in the conduct of its business, thereby contravening 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. Therefore, I have no hesitation in agreeing with 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 three weeks for the said violation. The same is reasonable and commensurate with the violations which stand established. The Broker had not denied the findings of the Enquiry Officer. 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.

5. 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. Ashok Makker & Co. [Registration No.INB

120593218], Member, The Ludhiana Stock Exchange Limited, for a period of three weeks.

6. 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: FEBRUARY 20, 2010**