

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 IN RESPECT OF M/S. RAKESH KAPOOR & CO., MEMBER, DELHI STOCK EXCHANGE LIMITED

1. Securities and Exchange Board of India (hereinafter referred to as SEBI), conducted an investigation into the alleged market manipulation and irregularities in the trading in the shares of Karishma Floriculture Limited (hereinafter referred to as Company) during the period between April 1995 and May 1996. The investigation, *inter alia*, revealed that M/s Rakesh Kapoor & Co. (hereinafter referred to as the stock broker), Member, Delhi Stock Exchange Limited (hereinafter referred to as DSE), actively traded in the shares of the Company at DSE on behalf of its client, during the relevant period. It was alleged that the said trades of the stock broker had contributed to the creation of liquidity/volumes in the said scrip, thereby, facilitating the possible manipulation in the scrip of the Company, during the relevant period. The stock broker was alleged to have contravened Clause A (1) to A(5) and C(6) of the Code of Conduct for stock brokers specified in Schedule II of the Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992 (hereinafter referred to as the Broker Regulations). Subsequently, SEBI vide orders dated July 30, 2004 and November 8, 2004 appointed an Enquiry Officer 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Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (since repealed) to enquire into the alleged violations committed by the stock broker, as stated above. Thereafter, the Enquiry Officer submitted the report dated February 6, 2007 and recommended suspension of the certificate of registration of the stock broker for a period of two weeks.

2. Subsequently, a notice dated February 17, 2007 was issued by SEBI to the stock broker asking it to show cause as to why the appropriate penalty as recommended by the Enquiry Officer should not be imposed against it. A copy of the Enquiry Report was also forwarded to the stock broker along with the said show cause notice. Thereafter, vide letter dated February 28, 2007, the stock broker filed the reply, *inter alia*, submitting that it was not in possession of records (on which the allegations and findings in the enquiry report were based) as about ten years had elapsed before the enquiry had commenced. The stock broker further stated that it was not aware about the conspiracy hatched or any Memorandum of Understanding (hereinafter referred to as MoU) signed between the parties mentioned in the Enquiry Report. It was further submitted that due to Mr. Rakesh Kapoor's illness (proprietor of the stock broker), he was not attending the day-to-day affairs of his business at the time of entering into transactions in the company and he was as much a victim of the conspiracy as other investors. It was also claimed that the stock broker paid its dues to DSE as and when it became due. It was also stated in the reply "*I am willing to suffer the proposed penalty.*"

3. Thereafter, an opportunity of hearing was provided to the stock broker on June 1, 2007. However, the stock-broker, vide electronic mail dated May 31, 2007 had raised a query regarding the nature of the proceedings and sought postponement of the said hearing. The stock broker was informed vide letter dated August 22, 2007 that the present proceedings is not a fresh enquiry but a continuation of existing proceedings. In the meanwhile, the stock broker had applied for consent, vide application dated June 23, 2008 and revised consent application dated January 15, 2010, in terms of SEBI Circular dated April 20, 2007. However, High Powered Advisory Committee constituted under the said circular, had recommended that the case may not be settled on the terms as proposed by the stock broker. Thus proceedings were revived and another opportunity of personal hearing was given to the stock broker on May 21, 2010, wherein Mr. Rakesh Kapoor, proprietor of the stock broker appeared and made submissions. He submitted that he was bedridden in 1995 during the time of alleged transactions and that in his absence, the person

who was looking after the affairs of the office of the stock broker was not complying with the norms. The representative of the stock broker did not dispute the violations committed by the stock broker. He further claimed that he had sold his properties to pay off the market dues as his client had defaulted in payment. In view of the above submissions, Mr. Rakesh Kapoor requested SEBI to consider the case of the stock broker leniently.

4. I have considered the Enquiry Report, the oral as well as written submissions made on behalf of the stock broker and other material available on record. The investigation conducted by SEBI *inter alia* found that the stock broker had bought and sold 11,12,600 shares and 1,54,200 shares of the company, respectively during the period of April 1995 to May 1996. All the trades of the stock broker were done on behalf of its client, Sharan Fincap Limited, an associate company of Mr. Amrik Singh who was alleged to have entered into a MoU with Mr. S.N. Bansal, promoter director of the Company. It was also observed that during December 11, 1995 to January 8, 1996, the stock broker had purchased 7,36,700 shares and sold 38,800 shares of the Company. The gross purchase position accounted for 18.93% of the total traded volume (buy) in the shares of the Company at DSE during the said period, which witnessed an increase in the share price of the Company from Rs. 17.50/- to Rs. 31.87/-. A comparison between DSE records and the records of stock broker show that huge off-market sale was executed by the stock broker. There is no evidence that the said trades were reported to DSE, as required under SEBI circular dated March 14, 1995. It was also observed by the investigation that various entities including the stock broker had received payments from entities associated with Mr. S.N. Bansal, the promoter of the Company. The stock broker had received a cheque for Rs. 15,00,000/- from Suman Nursery through Mr. Amrik Singh. In respect of the contention of stock broker that old records were not available, I note that Enquiry Officer in paragraph 7 of the Enquiry report had observed "*RKC were provided the opportunity to inspect the documents and vide letter dated January 25, 2005, confirmed inspection of the documents on January 18, 2005.*" Thus, I do not see merit in the said contention.

5. The facts of the case are not in dispute. By indulging in such transactions, as explained in detail in the Enquiry Report, the stock broker did not uphold the expected standards of integrity and fairness in its conduct. It also did not exercise due care while executing such transactions. By doing so, the stock broker had contravened the relevant provisions of law. The above findings would also lead to the conclusion that the stock broker had failed to comply with his duties as specified under Clause A of the Code of Conduct specified in Schedule II of the Broker Regulations, as observed by the Enquiry Officer. In terms of the Code of Conduct, a stock broker shall not *inter alia* 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. Further, it is the duty of the stock broker to maintain high standards of integrity, promptitude and fairness and shall act with due skill, care and diligence in the conduct of his business. He shall not *inter alia* indulge in manipulative transactions with a view to distort the market equilibrium. As stated above in this order, the stock broker had failed to comply with his duties as expected of a SEBI Registered intermediary. Thus, the contravention of Clause A of the Code of Conduct in schedule II of the Broker Regulations stands established. In view of the above, I note that the stock broker, while dealing in substantial volumes in the shares of the Company and by executing large scale off market trades had failed to adhere to the Code of Conduct prescribed for stock brokers. Therefore, in the facts and circumstances of the case, I am in agreement with the findings of the Enquiry Officer.

6. In the course of hearing, Mr. Rajesh Kapoor admitted that the trades of the stock broker in the shares of the Company were in violation of law as alleged. His contention was that the person who was looking after the business was doing all those activities in his absence. Mr. Rajesh Kapoor also requested that a lenient view be taken, as the matter is very old and that he had already paid for the purchases of its clients, who had defaulted in payment. Considering, the totality of the facts and circumstances, the present enquiry proceedings is disposed of, as ordered hereinbelow.

7. 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 M/s. Rakesh Kapoor & Co. (Registration No.050096415), Member, Delhi Stock Exchange Limited is hereby cautioned for the aforesaid acts and further advised to be careful while dealing in the securities market.

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

PLACE: MUMBAI
DATE: JUNE 22, 2010