

WTM/KMA/ERO/IVD/286/07/2010

**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) REGULATIONS, 2008 AGAINST M/S.
DEEPAK JHUNJHUNWALA & CO. IN RESPECT OF ITS DEALINGS IN THE
SHARES OF RADIANT FINANCIAL SERVICES LIMITED**

Dates of Hearing: July 2, 2010

Appearance:

For M/s. Deepak Jhunjhunwala & Co: Mr. Vinay Chauhan, Advocate

For the Securities and Exchange Board of India: Mr. Jayanta Jash, General Manager
 Mr. Vijayakrishnan G., Deputy Legal Adviser

1. It was brought to the notice of the Securities and Exchange Board of India (hereinafter referred to as SEBI) that the shares of some illiquid companies listed at the Calcutta Stock Exchange Limited (hereinafter referred to as CSE), were traded among certain members of a group operating collusively in a circular manner and the same were later on sold at highly inflated prices during the period between January 1, 2004 and 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 in the dealings in the shares of the company *inter alia* observed that the company's share price had witnessed a sharp rise during the aforesaid investigation period. 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 by 11,438%. It was further noticed that the stock brokers, namely, M/s. Dinesh Kumar Lodha, Subh Stock Broking Private Limited, M/s. S. Jhunjhunwala & Co. and M/s. Deepak Jhunjhunwala & Co (hereinafter referred to as the Broker) had traded substantially in the shares of the company and that their cumulative trades accounted for 98.23% of the total (buy and sell) volumes traded in the shares of the company at CSE during the investigation period. In view of the findings of the said investigation, it was 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).

2. Thereafter, SEBI, vide order dated November 12, 2007 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 Broker. The Enquiry Officer/Designated Authority (hereinafter referred to as the Enquiry Officer) submitted the Enquiry Report dated February 6, 2009 under the provisions of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 and found the Broker guilty of contravening Clause A(2) of the Code of Conduct prescribed for stock brokers under Schedule II of the Broker Regulations. The Enquiry Officer further observed that the allegation of violation of Regulation 4(2)(a), (e) and (o) of the PFUTP

Regulations and Clauses A(1),(3) & (4) and B(4)(a) of the Code of Conduct prescribed for stock brokers under Schedule II of the Broker Regulations were not established. The Enquiry Officer recommended that a warning be issued to the Broker. Pursuant to the submission of the said Report, a notice dated February 13, 2009 was issued 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 along with the said notice. In reply, the Broker, vide letter February 19, 2009 requested not to impose the penalty as recommended, in view of the various observations made by the Enquiry Officer. Thereafter, an opportunity of hearing was also granted to the Broker on May 8, 2009. As, SEBI was *prima facie* not satisfied with the findings of the Enquiry Officer in respect of the alleged matched and cross deals of the Broker for which a benefit of doubt was given, a supplementary notice dated June 16, 2009 was issued by SEBI requiring the Broker to show cause as to why the cross/matched deals executed by it are not *prima facie* in violation of Regulation 4(2)(a) and (e) of the PFUTP Regulations. No reply was submitted by the Broker to the said show cause notice. Thereafter, the Broker filed an application for a consent order in terms of SEBI circular dated April 20, 2007. In view of the same, the present proceedings was kept in abeyance and the same was subsequently resumed pursuant to the rejection of the said application. Subsequently, an opportunity of hearing was provided to the Broker on July 2, 2010. In the meanwhile, the Broker, vide letter dated July 1, 2010 *inter alia* stated that it had always acted with due care, caution and diligence and that it executed trades strictly as per the instructions of the clients as to price, quantity and time. With respect to the alleged synchronised trades, the Broker denied having indulged in any act which created false or misleading appearance of trading in the securities market or indulged in any act or omission amounting to manipulation of the price of the security. It was further submitted that the trades

carried out by it were on the order matching mechanism of the stock exchange where the identity of the counter party was not disclosed. The Broker further contended that since there were only a few stock brokers active in CSE; there was a high degree of possibility of its trades matching with other stock brokers them who were trading on behalf of their clients. As regards the cross deals, the Broker submitted that the cross deals were miniscule in quantity and that only four cross deals were carried out on different dates for different clients and that the said cross deals were “reversed transactions”. It was also contended that there is no evidence that while it was trading for its clients, it acted collusively with the other stock brokers with a view to carry on fraudulent and unfair trade practices or executed non-genuine trades for creating misleading appearance. On the date of hearing, Mr. Vinay Chauhan, Advocate represented the Broker and made submissions. The advocate *inter alia* submitted that the Enquiry Officer had exonerated the Broker from the charges of violating the PFUTP Regulations and various clauses of Code of Conduct except Clause A2. He further submitted that all the trades of the Broker were on behalf of the clients except for one trade for 10,000 shares. According to the advocate, there was a gradual rise in the share price from December 2004 onwards. It was also contended that the only basis for the finding is the trading pattern alone and that the orders were executed in several trades and therefore is not as voluminous as it looks. The advocate further submitted that no action has been taken against the Broker, so far.

3. 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 Regulations 4(2)(a) and (e) of the PFUTP Regulations and Clause A(2) of the Code of Conduct for stock brokers specified under Schedule II of the Broker

Regulations, while dealing in the shares of the company during the investigation period. The investigation conducted by SEBI *inter alia* observed that:

- a. Most of the trades in the shares of the company 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 paragraph 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).

4. The share price of the company had increased from Rs.1.95/- to Rs.225/- during the investigation period. The total volume in the shares of the company at CSE during the investigation period was 1,18,58,944 shares. The volume of the Broker was 9,29,550 shares. The trades of the Broker constituted 7.80% of the total volume in the shares of the company at CSE and the said details are given below:

Name of the stock broker	Trading Data					
	No. of shares bought	% to Total Buy	No. of shares sold	% to Total Sell	Total no. of shares	% to Total Buy & Sell
Broker	7,66,500	12.9	1,63,050	2.7	9,29,550	7.8

The aforesaid facts have not been disputed by the Broker. It is also noted that the Broker had also executed cross deals and matched trades 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							
	Dinesh Kumar Lodha		Subh Stock Broking Private Limited		S. Jhunhunwala & Co.		Broker	
	Qty	%	Qty	%	Qty	%	Qty	%
Broker	52,700	5.7	6,53,800	70.3	1,98,249	21.3	21,800	2.3

5. The above details would establish that around 97% of the total trades of the Broker were either executed through synchronised/matched transactions or cross deals. The Broker executed a number of cross deals/synchronised trades in the shares of the company during the investigation period. Details of such trades were provided to the Broker along with the show cause notice issued by the Enquiry Officer. 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. It is a fact that the Broker had executed number of trades including synchronised trades and cross deals. From the trade log and order log of the Broker, it was alleged that the Broker had raised the share price of the company by thin margins on daily basis, as given below:

Date	Previous day Closing price(Rs)	Closing Price (Rs)	Exchange volume	Volume created by the Broker	% Increase in share price
19.11.04	5.10	5.35	114000	57000	4.9
23.11.04	5.00	5.50	74400	37200	10.0
24.11.04	5.50	6.10	43600	11300	10.9
25.11.04	6.10	6.75	62000	25000	10.7
01.12.04	7.85	8.70	18000	8500	10.8
16.12.04	14.90	16.90	64400	31700	13.4
28.12.04	18.25	18.35	66600	33300	0.5
04.01.05	18.35	19.55	24300	12150	6.5
05.01.05	19.55	21.90	16000	8000	12.0
07.01.05	21.90	24.60	1200	600	12.3
12.01.05	31.45	35.45	48600	24300	12.7
19.01.05	45.10	51.45	2010	1000	14.1
25.01.05	43.75	49.50	27788	13894	13.1
27.01.05	49.50	54.00	88	44	9.1
31.01.05	61.90	70.05	10	5	13.2
03.02.05	91.25	104.00	2100	1050	14.0
04.02.05	104.00	117.50	80800	1800	13.0
07.02.05	117.50	133.45	4000	2000	13.6
09.02.05	151.90	172.50	42000	2000	13.6
10.02.05	172.50	185.80	48000	3000	7.7
11.02.05	185.80	194.50	86400	2600	4.7
14.02.05	194.50	198.50	103000	2000	2.1

From the above details, it is evident that the placing of orders by the Broker at

successively higher prices had impacted the share price of the company during the relevant period. The shares of the company were less frequently traded. The share price had increased unusually when the aforesaid stock brokers (including the Broker) were trading. Almost all the trades of the Broker were either synchronised or cross deals. For the aforesaid reasons, the contention of the Broker that merely because it had traded on behalf of its clients who chose to place orders at a successively increasing prices, it cannot lead to the conclusion that it failed to act with caution and due care lacks merit. The Broker contended that the share price could rise for various reasons and that there was no alert issued either by SEBI/CSE with regard to the alleged price movement and that the price moved within the circuit filters stipulated by CSE. I am unable to accept the same. There was no other reason for the unusual rise in the shares price of the company, as the said artificial increase was the collective outcome of the trades of the aforesaid stock brokers. Further, the numerous instances of synchronised trades cannot be said to be a mere co-incidence. In this background, the contention that the share price had moved only within the circuit filter is also not acceptable. The said contention cannot be taken as a defence in a case where orders have been placed at successive higher prices through synchronised and cross deals as was done in the present case. It was further stated that there was no steady increase in the share price of the company and that the share price was also moving high and low as well. Needless to say, the trades of the stock brokers including the Broker created volumes. The case of the Broker was that there was no reversal of trades and all its trades were delivery based. However, I note that the share price had substantially increased during the period of its trades. As stated above in this order such increase cannot be said to be genuine. The share price had increased without any genuine basis.

6. The Broker had purchased and sold 7,66,500 shares and 1,63,050

shares respectively during the relevant period. Considering the nature of the trades executed by the Broker on behalf of its various clients, which were instrumental in the artificial price rise, it cannot be said that all its trades were genuine and without any manipulative intent. The artificial price movement occurred in the shares of the company during the relevant time would indicate the involvement of the Broker in the same. In view of the same, the violation of Regulation 4(2)(e) of the PFUTP Regulations stands established. The trades of the Broker which were in the nature of synchronised and cross deals, created volumes in the shares of the company. It is also established that the share price had artificially increased during the period. Therefore, the Broker has also violated Regulation 4(2)(a) of the PFUTP Regulations. As already mentioned above, the Broker had executed cross deals and synchronised trades. The submissions put forward on behalf of the Broker would not support its action of placing large orders in a synchronised manner in the shares of illiquid scrip. The Broker should have doubted the nature of the orders placed by the clients in such a situation. The Broker should have exercised due skill, care and diligence in the conduct of its business and while placing orders for its clients in the shares of the company, more particularly when the shares of the company were not frequently traded. Instead, it had executed the orders as stated above in this Order. In the said process, the share price had also gone up. Being an intermediary operating in the securities market, it was the duty of the Broker to exercise due skill, care and diligence in the conduct of its business. A cumulative analysis of the facts of the case, clearly indicate that the Broker failed to comply with same. In the facts and circumstances and considering the material available on record, it is also established that the Broker had violated Clause A(2) of the Code of Conduct for stock brokers specified under Schedule II of the Broker Regulations, while dealing in the shares of the company during the relevant period. The Enquiry Officer has recommended that a penalty of “warning” be issued to the stock broker. Considering the totality of the facts and

circumstances of the case and the involvement of the Broker, I am of the considered view that a penalty of warning is sufficient and accordingly, the present enquiry proceeding initiated against the Broker is disposed of as ordered herein below in terms of the provisions of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.

7. 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 the Securities and Exchange Board of India (Intermediaries) Regulations, 2008, hereby warn the stock broker, M/s. Deepak Jhunjhunwala & Co. (Registration no. INB031070411), Member, The Calcutta Stock Exchange Limited for its conduct observed above in this Order and further advised to exercise adequate caution while functioning as a stock broker.

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

PLACE: MUMBAI

DATE: JULY 26, 2010