

**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. ASHOK KUMAR KAYAN, MEMBER, THE CALCUTTA STOCK EXCHANGE LIMITED, IN RESPECT OF ITS DEALINGS IN THE SHARES OF AMLUCKIE INVESTMENT COMPANY LIMITED

Date of hearing: July 2, 2010

Appearance:

For M/s. Ashok Kumar Kayan: Mr. Vinay Chauhan, Advocate

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

1. The Securities and Exchange Board of India (hereinafter referred to as SEBI) had initiated an enquiry vide Order dated April 21, 2007 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Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (since repealed) against the stock broker, M/s. Ashok Kumar Kayan (hereinafter referred to as the stock broker), Member, The Calcutta Stock Exchange Limited (hereinafter referred to as CSE), in respect of its dealings in the shares of Amluckie Investment Company Limited (hereinafter referred to as the company). The aforesaid enquiry was initiated against the stock broker in view of the allegation that it had *inter alia* contravened the provisions of Regulation 4(2)(a),(e) & (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) to (4) and B(4)(a) of the Code of Conduct prescribed for stock brokers in Schedule II of the

Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992 (hereinafter referred to as the Stock Brokers Regulations). The Enquiry Officer in his Report dated May 29, 2008 found that the stock broker had contravened the aforesaid statutory provisions and recommended that the certificate of registration of the stock broker be suspended for a period of four months. Thereafter, a notice dated June 11, 2008 enclosing therewith a copy of the Enquiry Report, was issued to the stock broker calling upon it to show cause as to why action should not be taken as recommended by the Enquiry Officer or as considered appropriate by SEBI. Subsequently, the stock broker filed an application for passing of a consent order in the matter, in terms of the SEBI Circular dated April 20, 2007. In view of the said application, the present proceedings was kept in abeyance and the same was resumed pursuant to the rejection of the said application. Thereafter, the stock broker, filed its reply dated October 22, 2009 to the show cause notice, as advised by SEBI vide letter dated September 16, 2009. An opportunity of hearing was also provided to the stock broker on July 2, 2010. In the meanwhile, the stock broker vide letter dated June 30, 2010 had submitted further reply in respect of the show cause notice. On July 2, 2010, Mr. Vinay Chauhan, Advocate represented the stock broker and made submissions. The submissions were made on the lines of the reply of the stock broker dated June 30, 2010.

2. I have considered the Enquiry Report, the replies dated October 22, 2009 and June 30, 2010 filed by the stock broker, the submissions made by the advocate on behalf of the stock broker and other material available on record. The issue to be determined in the present matter is to find whether the stock broker had contravened the provisions of Regulation 4(2)(a),(e)&(o) of the PFUTP Regulations and Clauses A(1),(2),(3),(4) and B(4)(a) of the Code of Conduct prescribed for stock brokers in Schedule II of the Stock Brokers Regulations, while dealing in the shares of the company during the relevant period. I note that the share price of the company had witnessed a sharp rise during the period– April 1, 2005 to August 23, 2005 at CSE. The average share price was Rs.95/- as on April

1, 2005 which went up to Rs.298.50/- as on August 23, 2005. The company was found to have low market capitalisation and its lacklustre financial performance could not have supported the said price rise in a short period of time. The aforesaid events led to the initiation of investigations into the dealing in the shares of the company for the period between April 1, 2005 and August 23, 2005 (the investigation period). SEBI had also passed an ad- interim ex-parte order dated September 29, 2005 in the matter and directed various entities/stock brokers including M/s M. Bhiwaniwala & Co and M/s Shyam Lal Sultania, not to buy, sell or deal in securities, in any manner, either directly or indirectly, till further directions. The said order was confirmed (as against the stock brokers), by SEBI, vide order dated January 12, 2006, as stated therein, after affording an opportunity of hearing. The enquiry proceeding initiated against M/s Shyam Lal Sultania and M/s M. Bhiwaniwala & Co were disposed of by SEBI, vide orders dated January 9, 2009 and July 7, 2009, respectively. The findings of the investigation in the matter revealed that a total of 37,34,498 shares were traded on both the buy and sell sides at CSE during the relevant period. It was found that the stock broker had executed trades in respect of 2,20,900 shares (buy and sell). The stock broker had bought and sold 81,200 and 1,39,700 shares respectively, of the company and the same constituted 5.91% of the total number of shares traded in CSE during the relevant period. It has been alleged that the stock broker had matched its orders with two other stock brokers, namely, M/s. Bhiwaniwala & Co. and M/s. Shyamlal Sultania. The investigation also found that the stock broker had also entered into cross deals in respect of 1,03,200 shares, which comprised 46.71% of its trades. The details of such trades are given below:

Cross and Matched transactions						
M/s. Ashok Kumar Kayan (the stock broker)	M/s. M.Bhiwaniwala & Co		M/s. Shyamlal Sultania		Stock broker	
	Qty	%	Qty	%	Qty	%
	34,200	15.48%	83,500	37.79%	1,03,200	46.71%

Out of its total trades involving 2,20,900 shares, the stock broker allegedly indulged in matching transactions with the orders placed by two other stock

brokers for 1,17,700 shares constituting 53.27%. The investigations revealed that the stock broker was trading for Raghu Padma Trust, Srijan Vyapar Private Limited and Swarn Ganga Trading Private Limited, who were its major clients. It was also found that during the period when the stock broker was actively trading, the share price of the company had moved up from Rs.102.30/- to Rs.298.40/-.

3. As regards the cross deals said to have been executed by the stock broker, the Enquiry Officer had observed that there were 60 such trades executed between April 18, 2005 and August 17, 2005 and that those trades were executed in the price range of Rs.102.30/- to Rs.298.00/-. The Enquiry Officer has further observed that:-

“.....that almost all the trades executed by the noticee (the stock broker) were cross deals and synchronised deals. The trades were executed over a period of time with the same set of counterparty brokers in the manner as stated above.....”

.....
.....

22. Facts of the case indicate that noticee executed cross and structured trades in collision with other entities to manipulate the price of the scrip in the manner as stated above.....”

4. The stock broker, vide reply dated October 22, 2009 had *inter alia* submitted that the trades executed in the shares of the company were done exclusively on behalf of its clients “as per their offer price and quantity”. It further submitted that all its trades were purely delivery based and no third party payments or delivery of shares had taken place. With respect to the finding of the Enquiry Officer on the allegation of “cross deals”, the stock broker in its reply dated June 30, 2010 denied the execution of the same with the intent of manipulatively influencing the share price. The stock broker contended that the alleged cross deals had been carried out by it on behalf of its clients based on their instructions as to price, quantity and time and that the said trades were executed by it at the prevalent market prices. According to the stock broker, the execution of cross deals is not illegal and that its trades were not in the nature of square off trades.

The stock broker has contended that there were actually 34 cross deals and not 60 as found by the Enquiry Officer. The stock broker further contended that, it is not the case that the cross deals were executed on a daily basis and that there was a gap of few days between each of them. It has been submitted that invariably all the cross deals have been executed at the prevalent market prices or on the previous days closing prices, which would establish that the cross deals executed by it had not influenced the price. The stock broker had also mentioned certain instances where the price was the same as the previous day's closing price. Though, the stock broker has disputed the number of cross deals executed by it, the quantity of shares transacted through the said deals have not been disputed. I find that 17 sell orders and 17 corresponding buy orders had been placed by the stock broker in the shares of the company between April 18, 2005 and August 17, 2005. The said orders resulted in trades for 1,03,200 shares. Such cross deals were not executed on a continuous basis but have been done intermittently and was over around a month's time. The cross deals of the stock broker were generally executed at the prices similar to the previous day's closing price except on two occasions, where the orders were placed at prices marginally higher than the previous day's closing price. On a perusal of the order logs of the stock broker, it is noted that different clients had been placing their orders. In view of the aforesaid reasons, it would be difficult to conclude that the said cross deals were executed with malafides. Therefore, the stock broker would be entitled for a benefit of doubt.

5. The stock broker has also been alleged of entering into matched and synchronised transactions with the stock brokers, M/s. Bhiwaniwala & Co. and M/s. Shyamlal Sultania. The investigation has alleged that the trades had identical quantities and rates and that the order time of those trades indicated that both the buy and sell orders were placed at identical time or within a gap of few seconds. The following table would indicate the extent of synchronised deals alleged to have been executed by the stock broker.

Synchronised/Matched transactions				
M/s. Ashok Kumar Kayan (the stock broker)	M/s. M.Bhiwaniwala & Co		M/s. Shyamlal Sultania	
	Qty	%	Qty	%
	34,200	15.48%	83,500	37.79%

The Enquiry Report had mentioned 15 instances of matched/synchronised transactions of the stock broker with that of M/s. Bhiwaniwala & Co. The stock broker has contended that all the trades were carried as per the instructions of their clients and that at the time of carrying the transactions in the order matching mechanism of the stock exchange, it was not aware of the counter party. The stock broker has also contended that synchronised trades were not per se illegal and that it cannot be said that it had colluded with the other stock brokers just because its orders had matched with their orders. It has also been contended that a few instances of stray matching of the trades cannot result in the finding that it had matched trades with select stock brokers. The stock broker has also contended that the synchronised trades are only 8 and not 15 as alleged and that the orders executed on July 1, 2005, July 13, 2005 and August 9, 2005 were only a single order. From the details available, it is noted that 8 orders were placed by the stock broker which resulted in 15 trades involving 34,200 shares. The orders placed by the stock broker and the counter party stock broker, M/s. M. Bhiwaniwala & Co. were placed in a synchronised manner as the time gap between the two were same or negligible. It is noted that the orders have been placed in the price range of Rs.295.75/- and Rs.298.00/- between the period—July 1, 2005 and August 18, 2005, when the orders were synchronised with that of M/s. M. Bhiwaniwala & Co. The exact matching of orders would not be possible in the absence of preconceived understanding between the parties.

6. As regards the synchronisation of the stock broker's orders with that of M/s. Shyamlal Sultania & Co., it has been alleged that it had executed 93 such trades. It is noted that the synchronised trades with M/s. Shyamlal Sultania & Co. were executed in the price range of Rs.265.10/- to Rs.298.00/- and that all its trades were "sell" trades except one buy trade for 2,000 shares at Rs.292.00/- on June

23, 2005. In respect of the said allegation, the stock broker had contended that the said trades did not result in influencing the share price. The primary contention of the stock broker is that there was a huge time gap between the orders and therefore the trades cannot be said to be synchronised. It has also been contended that the orders were placed in the price band of Rs.265.00/- and Rs.298.00/- and that the alleged synchronised trades were executed on 20 different days during the investigation period spanning 142 days. As regards the finding that almost all the trades executed by the stock broker were cross deals and synchronised deals and that the trades were executed over a period of time with the same set of counter party brokers, the stock broker has contended that during the relevant time there were very few brokers who were active on the CSE and therefore, there is a high degree of possibility that its trades had matched with a set of stock brokers. I have perused the order log (of the orders placed by the stock broker) and the trade time of the orders that had matched with the orders placed by M/s. Shyamlal Sultania. A total of 93 trades had been executed between them. Out of the said trades, the matching of few trades had happened within less than a minute of placing of the order. The stock broker has also contended that there is no connection/linkage established between the other stock brokers and stated that it did not indulge in proprietary trades nor had it indulged in squaring-off the trades. It is observed that the clients of the stock broker, Srijan Vyapar Private Limited and Swarn Ganga Trading Private Limited shared the same office address and one Abhiset Basu was a common director in them. The stock broker stated that the said clients were dealing through it for quite a long time and in a number of scrips and submitted that it had no other relationship with them other than the stock broker-client relationship. However, the said submission would not come to the defence of the stock broker, as it was involved in number of synchronised orders, as stated above, wherein the price and quantity were the same. The time difference between some of the orders was very small, as mentioned above. The exact matching of orders would not be possible in the absence of preconceived understanding between the parties. The price also increased during the period when the stock broker had traded.

7. The contention that during the relevant time there were very few brokers who were active on the CSE and therefore, there is a high degree of possibility that its trades had matched with a set of stock brokers would not help the stock broker. It is not a simple case where the trades merely matched between the parties. On the otherhand, the orders were placed with the same quantity and price more or less at the same and accordingly the trades were executed in a synchronised manner. If the respective stock brokers have placed orders with the same quantities and price in the normal course, the said orders could have matched as there was less participation. One cannot ignore the fact that the shares of the company were illiquid. In such a situation, the orders placed in furtherance of their pre-conceived understanding, as observed in the present case, cannot be said to have been made with bonafide intention, for whatever be the reasons. It is not in dispute that the share price of the company had increased substantially during the relevant period. The average share price was Rs.95/- as on April 1, 2005 which went up to Rs.298.50/- as on August 23, 2005. The said scrip had witnessed a price rise of 214% within a period of four months and twenty two days. The company had a low market capitalisation and its insignificant financial performance could not have supported the said price rise in a short period of time. In this background, it is expected that the stock broker should exercise prudence and diligence while acting on the instructions of the client. In such a case, the stock broker cannot be a mere executor of the client's orders without assessing the bonafides of their orders. The stock broker has a duty towards the securities market. He cannot be a party to any manipulative or unfair trade practices and subsequently claim that the trades were executed only on the instructions of the clients. If a stock broker is interested only in the commercial aspects of its business leaving aside his statutory fiduciary responsibilities, he would be failing in his duties in safeguarding the integrity of the securities market. I am not convinced by the argument that the stock broker has no role to play in the manipulation. Further, the synchronised/matched trades would have definitely influenced the volumes that were traded and the share price during the relevant period. The trades also created misleading appearance of trading. When the stock

broker came to know of the trading pattern of its clients, it should have been prudent enough to refrain from further placing such orders. It also did not exercise due care while executing such transactions. Further, it appears that the stock broker continued trading for its clients also for the purposes of generating commission for itself. Though, the stock broker has contended that its trades done on behalf of the clients constitutes merely 5.91% of the trades at the CSE which is not significant enough to influence the price, many instances of cross deals and synchronised trades executed by the stock broker have been observed. In view of the aforesaid trade practices of the stock broker, the violation of Regulation 4(2)(a),(e) and (o) of the PFUTP Regulations and clauses A(1) to A(4) and B(4)(a) of the Code of Conduct prescribed for stock brokers under Schedule II of the Stock Brokers Regulations stands established.

8. It was the request of the advocate to take a lenient view in the matter, in case SEBI is coming to a conclusion that the stock broker had violated the Regulations. The advocate *inter alia* submitted that the stock broker had already made the payment as per the consent terms in two other cases for the relevant period and had paid the adjudication penalty in another matter. As stated earlier, the stock broker is entitled for a benefit of doubt in respect of the cross deals executed by it. It was also the submission of the advocate that the stock broker was not executing synchronized trades continuously and that the volume contributed by it was insignificant as compared to the volumes contributed by the other two stock brokers. He contended that it was for the said reason that even SEBI thought fit not to include the stock broker while passing the ex-parte ad interim order dated September 29, 2005. The Enquiry Officer has recommended that the certificate of registration of the stock broker be suspended for a period of four months. The Enquiry Officer has also observed that the period of prohibition already undergone by the stock broker, vide Order dated September 29, 2005 be taken into account. It is an inadvertent mistake in the Enquiry Report as the said Order did not impose any prohibition or restraint on the stock broker in respect of its dealings in the securities market and that the dealings of the stock broker were

not the subject matter in the said Order, as contended by the advocate. On a consideration of the case in its totality and the facts and circumstances applicable to the stock broker, I am of the considered view that the present case does not call for a penalty as recommended by the Enquiry Officer and that the ends of justice would be met if the stock broker is warned for its conduct. As the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 has been repealed by the Securities and Exchange Board of India (Intermediaries) Regulations, 2008, the present proceeding is accordingly disposed of under the relevant provisions of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.

9. 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. Ashok Kumar Kayan (Registration no. 030491111), Member, The Calcutta Stock Exchange Limited for its conduct observed above in this Order. The said stock broker is 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: AUGUST 2, 2010