

**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 JAI  
SHAREFIN LIMITED**

Date of hearing: February 10, 2010

Appearance:

For Jai Sharefin Limited : Mr. Mayukh Pandya, Authorized Representative

For the Securities and Exchange Board of India: Mr. Biranchi N. Sahoo, Deputy General Manager  
Ms. Pramila Sridhar, Assistant General Manager  
Ms. Chhavi Sinha, Legal Officer

1. The Securities and Exchange Board of India (hereinafter referred to as SEBI), pursuant to an inspection conducted by M/s. Lahoti & Lahoti (Chartered Accountants), in respect of the books of accounts, documents and other records maintained by the stock broker namely, Jai Sharefin Limited (hereinafter referred to as the stock broker), for the period April 2001 to September 2003, vide order dated February 25, 2004 read with a subsequent order dated September 30, 2004 appointed an Enquiry Officer, under the provisions of 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Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations 2002 (since repealed) to enquire into the alleged violations/irregularities committed by the said stock broker. The copy of the inspection report was also provided to the stock broker. The Enquiry Officer, vide report dated December 30, 2005 while recommending the suspension of the certificate of registration of the stock

broker for a period of one month, found that the stock broker had contravened the following:

- i. Clause A (1), A (2), A (3) and A (5) of the Code of Conduct for the 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).
- ii. SEBI Circular No. SMDRP/Policy/Cir-6/2001 dated February 1, 2001
- iii. SEBI Circular No. SMDRP/Policy/Cir-39/2001 dated July 18, 2001
- iv. SEBI Circular No. SMD/Policy/IECG/1-97 dated February 11, 1997
- v. SEBI Circular No. SMD/Policy/Circular/5-97 dated April 11, 1997
- vi. Regulations 21(1), 21(2), 21(4), 27(ix) and 27(xvi) of the Broker Regulations.

2. Subsequently, a notice dated January 5, 2006 was issued by SEBI to the stock broker along with the Enquiry Report, requiring it to show cause as to why penalty as recommended by the Enquiry Officer should not be imposed against it. Thereafter, the stock broker, vide letter dated January 18, 2006 filed a reply to the said show cause notice and the same is considered in the later part of this order. Subsequently, the stock broker filed an application for consent order in terms of SEBI Circular dated April 20, 2007. Pursuant to the rejection of the said application, an opportunity of hearing was granted to the stock broker on February 10, 2010. In the meanwhile, the stock broker, vide letter dated February 8, 2010 *inter alia* stated that, SEBI had imposed minor penalty of warning in similar matters. On February 10, 2010, Mr. Mayukh Pandya, authorized representative of the stock broker appeared before me and made submissions on the lines of the reply dated January 18, 2006 of the stock broker. The learned representative *inter alia* requested to drop the present enquiry proceedings as the stock broker had already paid a penalty of Rs 75,000/- under the adjudication proceedings initiated by SEBI, for similar charges. According to him, the present proceeding would therefore amount to double jeopardy.

3. I have considered the Enquiry Report, the show cause notice issued to the stock broker, the oral as well as the written submissions made on its behalf and other material available on record. The preliminary submission made by the stock broker is that the present enquiry proceedings would be hit by the principles enshrined under Article 20 (2) of the Constitution of India. I am unable to accept the said plea of the stock broker for the following reasons. As per Article 20(2) *“No person shall be prosecuted and punished for the same offence more than once”*. Thus, what is prohibited under Article 20(2) is the *prosecution and punishment* for the same offence more than once. Therefore, the plea of double jeopardy is not applicable in the present proceedings. Further, the enquiry proceedings and the adjudication proceeding are two distinct proceedings and the end result of both the proceedings are wholly different from each other. The said actions legally flow from the statutory powers vested with SEBI. Apart from the above, all the charges leveled against the stock broker under the enquiry proceedings and in the adjudication proceedings were not the same. The allegations leveled against the stock broker, as per the Enquiry Report and in the Order of the Adjudicating Officer are given below:

<b>Sr. No.</b>	<b>Enquiry Proceeding</b>	<b>Adjudication Proceeding</b>
1	Dealing with unregistered sub-broker.	Dealing with unregistered sub-broker.
2	Not obtaining Client Registration Forms and not mentioning Unique Client Code.	Failure to maintain client registration forms
3	Execution of non-genuine trades for Income Tax benefits, Issuing Contract notes for unreported internal trades and Abnormal client ledger accounts and their balances.	Contract note not issued as specified by the stock exchange.
4	Margin requirements not followed.	Non-segregation between the clients account and own account.
5	Non-Cooperation with inspection authority.	Not making payments to the clients within the prescribed time of 48 hours of the pay out

The two charges which were common to both adjudication and enquiry proceedings are (i) dealing with unregistered sub broker and (ii) not maintaining

client registration forms. However, both the Enquiry Officer and the Adjudicating Officer found the stock broker not guilty of the first charge (dealing with unregistered sub broker), in the absence of supporting evidence. The remaining charges leveled against the stock broker under this proceedings were not the subject matter of the proceedings before the Adjudicating Officer. The said charges are considered for the first time, under the present enquiry proceedings. Except for the common charges mentioned above, all other charges were distinct and separate with different ingredients. Thus, the crucial requirement for invoking the principle of 'double jeopardy' is absent in the present case. Further, the contention of the stock broker that the Enquiry Officer had not considered its representation dated September 19, 2005 regarding "double jeopardy" is not correct. The said plea of the stock broker was considered by the Enquiry Officer and a finding was also given by him in this regard. The relevant portion of the said finding in the Enquiry Report is extracted hereinbelow:

*“ .....The prohibition against double jeopardy is available only in the case of criminal prosecutions in respect of an offence. Quasi Judicial proceedings such as adjudication and enquiries are not mutually exclusive within the ambit of Article 20(2) of the Constitution of India. In view of the same it is found that the contention of the entity that the enquiry proceedings amount to double jeopardy is not legally sustainable”*

4. The stock broker had also relied upon the judgment of the Hon'ble Securities Appellate Tribunal in the matter of M/s Opee Opee Stock Link Ltd. and another Vs SEBI. The said order would not benefit the stock broker as the facts of the said case and the present one are totally different. I note that in the said order, it was observed “.....the Act enables the Board to initiate parallel proceedings **on the same set of facts** against a delinquent for issuing directions under

*Section 11B on the one hand and adjudication proceedings under Chapter VIA for imposition of monetary penalties on the other”(emphasis supplied).* In view of the foregoing, the plea of double jeopardy has no applicability in the present proceedings and is liable to be rejected.

5. Coming to the violations committed by the stock broker, I note that the Enquiry Officer observed that the stock broker had not provided any explanation for executing fictitious transactions for enabling certain entities to get income tax benefits. It was alleged that the stock broker had executed non genuine trades in the scrip of Hindustan Continental and Priya Sarees. It was alleged that the said trades were executed to allow certain parties to encash the benefit for exemption of Long Term Capital Gain Tax under the Income Tax Act, 1961. In respect of the said charge, the stock broker stated that all transactions were done on the floor or the Exchange or as principal-to-principal as provided in the bye-laws of the exchange. The stock broker also contended that the said trades were genuine and that it had received payments and delivery from their clients in respect of the transactions. In the inspection report, it was observed that the share price of Hindustan Continental was in the range of Rs.28/- per share on June 16, 2003 and June 25, 2003, whereas the stock broker had issued a contract note (for buying from one K.K. Finance Limited and selling to various parties) at the price Rs.2.99/- share for 1,80,000 shares on June 19, 2003. Similarly, the share price of Priya Sarees was in the range of Rs.100-Rs.109 between October 16, 2002 and March 11, 2003, a large number of transactions were executed on March 31, 2003 at a price of Rs.7.5 per share. These details were also mentioned in the Enquiry Report. However, no specific explanation has been given by the stock broker in this regard except saying that the said transactions were done on the floor of the exchange, without any supporting material. In the given facts, it cannot be said that the said transactions were genuine. It would only lead to a conclusion that the same were fictitious

transactions for enabling certain entities to get 'income tax' benefits. It is the mandatory duty of every stock broker to maintain high standards of integrity and fairness in the conduct of its business. By entering into activities as mentioned above, the stock broker had failed adhere to such basic norms. It was also alleged that the stock broker issued contract notes for unreported internal trades in which K.K. Finance Limited and Sunil Share & Stock Broking Private Limited were the sellers and the buyers, were newly introduced parties. It was also observed in the inspection report that the client account (Kirit Securities) was used mainly for the purpose of accommodating fake capital gain bills. The copy of unreported trade summary for valan no. 2245 and 2246 was enclosed in the said report as annexure. The stock broker submitted that all the transactions were done in listed securities and in 'A' group or 'B' group. I further note that the stock broker had improper ledger accounts of few of their clients. According to the stock broker, no evidence or proof has been adduced for abnormal ledger accounts of clients. I cannot agree with the said contention. The inspection report clearly specified such ledger accounts (including that of K.K. Finance Limited and Sunil Share & Stock Broking Private Limited). The details of which were furnished to the stock broker by the Enquiry Officer. However, no specific submissions were made by the stock broker in this regard. The Enquiry Officer on the basis of the allegation leveled against the stock broker had observed in the Report that it had issued contract notes on regular basis for unreported internal trades and the said trades were executed to accommodate and facilitate the clients in respect of fake Capital Gains Bills and to allow them Badla Trading. It was also alleged that the brokerage in respect of the said trades was not charged and that the contract notes were issued without any pre-printed number and the order time was also not given. Though, the stock broker stated in its reply that the contract notes were 'computerized serially numbered', it could not substantiate the said claim. In the facts and circumstances, the stock broker became a necessary party to the non genuine

trades. In view of the same, I have no hesitation to accept the Enquiry Officer's finding that the stock broker, by executing non-genuine trades to afford income tax benefits to certain entities and by issuing contract notes for unreported internal trades, failed to exercise due diligence in the course of its business and also indulged in fraudulent and deceptive transactions and thus, failed to comply with the statutory requirements. In view of the above, the stock broker had violated Clauses A(1), A(2), A(3) and A(5) of the code of conduct for stock brokers prescribed under Schedule II of the Broker Regulations.

6. I note that the Enquiry Officer also found that the stock broker did not obtain client registration forms and did not mention unique client code. In this regard, the stock broker submitted that some procedural lapses were there and the same had been rectified. According to the stock broker, the number given was alpha numerical and numerical would start after 100 i.e. 101 and onwards so the actual number of clients were not 1500 but less. In the inspection report, it is clearly mentioned that as per the client list of the stock broker, it had more than 1500 clients but client registration forms were available for only 150 clients. The contention that the 'numerical' starts from 101 and that he had only 150-200 clients cannot be accepted as the same would take the count to 250-300 only and not to 1500. This has not been properly explained by the stock broker. In terms of the inspection report, in all cases, net worth statement, income proof and bankers verification were not available. Further, in majority of the cases, the introduction was also not available. It was also observed that in certain cases, identity proof as well as the photo of the clients was not available. The client registration form needs to be mandatorily maintained in terms of SEBI Circulars dated February 11, 1997 and April 11, 1997. Therefore, I conclude that that the stock broker had contravened the aforesaid circulars. In terms of SEBI Circular No. SMDRP/Polcy/Cir-6/2001 dated February 1, 2001 and SMDRP/Policy/Cir-39/2001 dated July 18, 2001, it is mandatory for a stock

broker to use unique client codes for all its clients. Instances of such lapses were mentioned in the inspection report. Thus, the stock broker has contravened the above mentioned SEBI circulars.

7. I note that the Enquiry Officer further found that the stock broker by not cooperating with the inspection team and by not providing necessary information, contravened the provisions of Regulations 21(1), 21(2) and 21(4) of the Broker Regulations, which makes it liable for an action as specified under Regulation 27(ix) of the Broker Regulations. In respect of the said charge, it is observed in the inspection report “.....Initially we complied and assembled the information from his records, but as soon as he came to know that his irregularities has been noticed he turned out to be totally non cooperative and snatched away our some of the working papers and ledger provided to us for inspection. On our several reminders and telephonic calls he informed us that he is in process of removing all internal trade transactions and such fake transactions and as soon as he finishes the same he shall provide us with the fresh information. We gave him a final deadline of 6<sup>th</sup> September 2003, but still he has not responded to same and has not provided us back the information sought from him”. As per Regulation 21(1) of the Broker Regulations, it shall be the duty of the stock broker who is being inspected, to produce to the inspecting authority such books, accounts and other documents in its custody or control and furnish the inspecting authority with the statements and information relating to the transactions in securities market within such time as the inspecting authority may require. Further, in terms of Regulations 21(2) of the Broker Regulations, a stock broker shall allow the inspecting authority to have reasonable access to the premises occupied by such stock broker or by any other person on his behalf and also extend reasonable facility for examining relevant documents in its possession and also provide copies of relevant documents. By indulging in activities as mentioned above, the stock broker

failed to comply with the said Regulations. Besides, in terms of 21(4) of the Broker Regulations, a stock broker shall provide all assistance to the inspecting authority in connection with the inspection. By indulging in activities as reported by the inspecting authority, the stock broker had violated Regulations 21(1), 21(2) and 21(4) of the Broker Regulations. The submission that the stock broker had given full cooperation and replied to all queries is not convincing in the facts and circumstances of the case. The stock broker has not specifically controverted the observation of the inspecting authority that on several reminders and telephonic calls, the stock broker had informed that it was in the process of removing all internal trade transactions and fake transactions and that as soon as it finished with the same, it shall provide the fresh information. The inspection report also mentioned that the stock broker failed to respond and did not provide the information before the final deadline of September 6, 2003, set by the auditors. The Enquiry Officer has not given any adverse finding in respect of the non-collection of margins and dealing with unregistered sub-broker.

8. In view of the foregoing, it is established that the stock broker had executed non-genuine trades to afford income tax benefits to certain clients, had issued contract notes for unreported internal trades and that it maintained improper ledger accounts and balances, which is in violation of Clause A(1), A(2), A(3) and A(5) of the Code of Conduct for stock brokers prescribed under Schedule II read with Regulation 7 of the Broker Regulations. The stock broker had also not followed the Know Your Client (KYC) norms, thereby violating SEBI Circulars dated February 11, 1997 and April 11, 1997. It had also violated SEBI circulars dated February 1, 2001 and July 18, 2001, as it failed to use 'unique client codes' for its clients. By not co-operating with the inspecting authority, the stock broker had contravened Regulations 21(1), 21(2) and 21(4)

of the Broker Regulations. The aforesaid violations which are serious in nature call for a penalty.

9. The stock broker in his letter dated February 8, 2010 *inter alia* stated that in the matters of M/s Ramanlal D. Shah, Manshvi Securities Limited, M. P. Vora Shares and Securities and Private Limited and Mangal Keshav Share & Stock Brokers Limited, the recommendation of the enquiry officer had been withdrawn by the Whole Time Member, SEBI. It had also submitted the copy of the respective orders [dated October 6, 2004 in the matter of M/s Ramanlal D. Shah, January 31, 2006 in the matter of Manshvi Securities Limited, January 31, 2006 in the matter of M. P. Vora Shares and Securities and Private Limited and August 31, 2004 in the matter of Mangal Keshav Share & Stock Brokers Limited] passed by SEBI. The said contention of the stock broker is not correct. In all such matters (except Manshvi Securities Limited), the recommendation of the respective enquiry officer was to impose warning. Pursuant to the consideration of the matter, SEBI had passed orders in the said matters imposing a penalty of warning in such cases. In the matter of Manshvi Securities Limited, the enquiry officer found that the said case not a fit one to impose any penalty. The said enquiry proceeding was subsequently dropped by SEBI, vide order dated January 31, 2006. Therefore, the contention that the Whole Time Member had set aside the recommendation of the enquiry officer is not correct. In the facts and circumstances of the present case, I am of the view that a penalty of suspension of the certificate of registration of the stock broker for a period of three weeks would suffice in the interest of justice. Accordingly, I dispose of the present enquiry proceedings against the stock broker as ordered herein below. The present proceedings has been initiated under the provisions of the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations 2002. Subsequent to the repeal of the said Regulations, this order is being issued under the relevant

provisions of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.

10. Therefore, 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 suspend the certificate of registration of the stock broker namely, Jai Sharefin Limited (Registration Number INB 020919133), Member, Ahmedabad Stock Exchange Limited, for a period of three weeks.

11. This Order shall come into effect immediately on expiry of twenty one days from the date of the Order.

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

**PLACE: MUMBAI  
DATE: MARCH 8, 2010**