

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. JHAVERI SECURITIES (PROPRIETOR, MR. TUSHAR JHAVERI)

1. Securities and Exchange Board of India (hereinafter referred to as SEBI) appointed M/s. Singhvi & Mehta (Chartered Accountants) to conduct an inspection of the books of accounts, documents and other records of the sub broker namely, M/s. Jhaveri Securities [affiliated to Rajesh Jhaveri Stock Brokers Private Limited (Member, Ahmedabad Stock Exchange Limited)] for the period 2002-03 and 2003-04. M/s. Jhaveri Securities is hereinafter referred to as the sub-broker. The aforesaid inspection observed certain irregularities/deficiencies committed by the sub broker. The findings of the inspection was communicated to the sub-broker vide letter dated December 24, 2004 and the sub-broker was required to offer its comments on the same within 14 days from the receipt of the said letter. However, the sub-broker failed to submit its reply. Thereafter, SEBI initiated adjudication proceedings under the provisions of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 against the sub broker. Though, the notices in respect of the adjudication proceedings were served on the sub broker, no effort was taken by it either to file its reply or to appear before the Adjudicating Officer. The Adjudicating Officer, after conducting the proceedings under the provisions of the above rules, vide order dated August 3, 2006 found the sub broker guilty of the charges therein and imposed a penalty of Rs.1,00,000/- on it. The sub broker was ordered to pay the said penalty within a period of 45 days

from the date of receipt of the said order. The aforesaid order was forwarded to the sub broker on August 07, 2006, through Ahmedabad Stock Exchange Limited.

2. As the sub broker had failed to pay the penalty so imposed, SEBI vide letter dated February 19, 2007 reminded it to pay the penalty and further informed that appropriate proceedings including proceedings for cancellation of the certificate of registration as per Regulation 27(xi) of Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as the Stock Brokers Regulations) read with Regulation 15(d) of Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 would be initiated against it. The said letter was also delivered to the sub broker through Ahmedabad Stock Exchange Limited on February 22, 2007. Thereafter, in view of the failure on the part of the sub broker in paying the penalty amount, as ordered by the Adjudicating Officer, SEBI vide order dated March 22, 2007 read with subsequent orders dated July 19, 2007 and December 10, 2008 appointed Designated Authority (hereinafter referred to as the Enquiry Officer) in terms of the provisions of Securities and Exchange Board of India (Intermediaries) Regulations, 2008 (Intermediaries Regulations) to conduct proceedings against the sub broker. The sub-broker neither filed any reply nor appeared for hearing before the Enquiry Officer. After conducting the enquiry, the Enquiry Officer in his report dated February 17, 2009 had concluded that the allegation made in the show cause notice dated June 23, 2008 issued to the sub-broker stands established and that it had violated Regulation 27 (xi) of the Stock Brokers Regulations. The Enquiry Officer recommended that the certificate of registration of the sub broker be cancelled.

3. Pursuant to the submission of the report, a notice dated March 2, 2009 (enclosing a copy of the report) was issued to the sub-broker requiring it to show cause as to why action should not be taken against it as recommended by the

Enquiry Officer. The sub broker was also required to submit its reply within 15 days from the date of receipt of the show cause notice. In case of failure, it was informed that SEBI would take action as deemed fit. The said show cause notice was served on the sub broker. A reminder dated March 31, 2009 was also issued to the sub-broker by registered post with acknowledgement due. The said letter was acknowledged by the sub-broker. Further, a copy of said reminder was also delivered to the sub-broker through the regional office of SEBI at Ahmedabad. The sub-broker received the same on May 27, 2009. In spite of receiving the show cause notice and the reminders, the sub-broker failed to submit its reply. The sub broker also failed to avail the opportunity of hearing granted to it on July 22, 2009 even though the hearing notice was delivered on the sub-broker on July 06, 2009.

4. I note that sufficient opportunities were provided to the sub broker for making its submissions in respect of the Enquiry Report dated February 17, 2009. Though, the show cause notice, reminders and the notice for hearing were delivered on the sub broker, it neither replied to the show cause notice nor appeared before me. I also note that the sub broker did not participate in the adjudication proceedings as well as the proceedings before the Enquiry Officer. In the facts and circumstances of the case, I do not consider it necessary to grant another opportunity to the sub broker and the present proceedings is being considered on the basis of the available material on record.

5. The present proceeding is initiated against the sub broker on its failure to pay the penalty as ordered by the Adjudicating Officer of SEBI, vide order dated August 3, 2006. Though, opportunity was provided to the sub broker to make its submissions in respect of the proceedings, no effort was taken by it to controvert the findings of the Enquiry Officer. There is nothing on record to indicate that the sub broker had paid the penalty as ordered by the Adjudicating Officer. Besides, no documents were produced by the sub broker to show that the said order of the Adjudicating Officer was challenged before the Hon'ble Securities Appellate

Tribunal or in any other forum. As an intermediary registered with SEBI, it is the bounden duty of the sub broker to comply with the orders of SEBI as well as that of the Adjudicating Officer, unless the same is set aside by the appellate courts. In the present case, the sub broker deliberately failed to pay the penalty. From its conduct, it can be inferred that the sub broker deliberately distanced itself from all the proceedings. It is noted that it had failed to appear before the Adjudicating Officer also. In the facts and circumstances of the case, I do not have any reason to disagree with the finding and the recommendation of the Enquiry Officer. Accordingly, the present proceeding is disposed of as ordered herein below.

6. 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 Securities and Exchange Board of India (Intermediaries) Regulations, 2008, hereby cancel the certificate of registration of the sub-broker namely, M/s. Jhaveri Securities (Proprietor, Mr. Tushar Jhaveri), affiliated to Rajesh Jhaveri Stock Brokers Private Limited, Member, Ahmedabad Stock Exchange Limited (Registration No.INS021139113/ Permanent Account Number AACPZ7827J).

7. 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: July 23, 2009