

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER REGULATION 28(2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008 AGAINST M/S RAKESH MISHRA

1. The Securities and Exchange Board of India (hereinafter referred to as SEBI) had received a reference (dated September 9, 1998) from the office of Additional Deputy Commissioner of Police, Crime Branch, New Delhi which *inter alia* stated that Mr. B. B. Sharma, the promoter of the Hoffland Group of Companies (hereinafter referred to as the Hoffland Group) had been arrested and that he had disclosed the details of certain stock exchange memberships held by him in different names including M/s Rakesh Mishra (hereinafter referred to as the Broker), member, the Uttar Pradesh Stock Exchange Limited (hereinafter referred as UPSE). The aforesaid letter further stated that the amount utilized for the purpose of the stock exchange memberships was diverted from the money collected from the public by the Hoffland Group. Thereafter, SEBI carried out an investigation to *inter alia* find nexus, if any, between certain entities including the Broker and the Hoffland Group. The aforesaid investigation conducted by SEBI *prima facie* revealed that the Broker was a front company of the Hoffland Group and was not a “fit and proper person” in terms of the Securities and Exchange Board of India (Criteria for Fit and Proper Person) Regulations, 2004 (hereinafter referred to as the Fit and Proper Regulations). It was also found that the Broker had defaulted in paying turnover fees to SEBI. Subsequently, SEBI, vide order dated October 22, 2008 read with a subsequent order dated December 7, 2008 initiated an enquiry in terms of the provisions of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 (hereinafter referred to as the

Intermediaries Regulations) to enquire into the alleged violations of Regulations 5(A), 5(e), 6(A)(a) and 6A(d) of the Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations 1992 (hereinafter referred to as the Broker Regulations) read with Regulation 38(3) along with Schedule II of the Intermediaries Regulations. The Designated Authority (hereinafter referred to as the Enquiry Officer), vide Report dated March 23, 2010, while recommending the cancellation of the certificate of registration of the Broker observed that the Broker had contravened Regulation 5(e) (read with 5A) and 6A(d) of the Broker Regulations.

2. Thereafter, SEBI sent a notice dated April 15, 2010 to the Broker advising it to file its written representation within twenty one days as to why action as recommended by the Enquiry Officer should not be imposed against it. The said notice was sent through UPSE. Subsequently, UPSE, vide letter dated May 3, 2010 informed that the Broker could not be located and therefore, the said notice was pasted at the address of the Broker. UPSE had also forwarded the report of the affixture of the said notice. Thereafter, SEBI had also sent the show cause notice on July 9, 2010 to the Broker through UPSE which was affixed by UPSE on the address of the Broker and a report on the same was also sent by UPSE, vide letter dated August 3, 2010. As stated above, though the Broker was afforded sufficient opportunities, no reply was submitted by it. Subsequently, an opportunity of hearing was also given to the Broker on December 3, 2010. The said letter was affixed by UPSE and a copy of the report on the service of notice was also forwarded by UPSE to SEBI on October 18, 2010. However, the Broker did not appear on the said date. As the Broker did not file its submissions despite various opportunities, I do not consider it necessary to grant another opportunity to it and the present enquiry proceeding is considered and disposed of on the basis of the available material on record. One of the allegations leveled against is that the Broker is not a "*fit and proper person*" for the following reasons:-

- a. The Broker was a benami company of Hoffland Group and the said group Hoffland Group had defaulted payments to various investors.
- b. The conduct of the Hoffland Group had been investigated by the police and several prosecution cases had been initiated against it.
- c. The Broker had not paid SEBI turnover fees of ₹20,000/- including an interest of ₹18,117. (As on November 23, 2010, the principal amount outstanding was ₹20,000/- and the interest was ₹ 27,372/- (total ₹ 47,372/-)
- d.

3. The address of the Broker as per the records was FF-11, Som Dutt Plaza, The Mall, Kanpur. Som Dutt Builders Private Limited, vide letter dated November 17, 2003 have stated that they had rented the said premises to Hoffland Share Shoppe Limited, vide lease agreement dated March 14, 1996. The said agreement was signed by Mr. Rakesh Mishra on behalf of Hoffland Share Shoppe Limited and was described as Chief Manager of the Hoffland Group. It was also learnt that the aforesaid office of the Broker had been one of the collection centers for deposits of the Hoffland Group. Further, as per Form 16 for the assessment year 1994-95 filed at the time of applying for membership of UPSE, Mr. Rakesh Mishra was an employee of Hoffland Finance Limited and drew a salary of Rs 55,354/- during 1993-94. It was also observed that in the certificate of networth dated nil of Mr. Rakesh Mishra issued by M/s Ajay Kanjhalia & Co (Chartered Accountants) it had been stated that "*Certified that Sh. Rakesh Mishra s/o Dr. Sati Kant Mishra R/o B-5/6, 4451, Vasant Kunj, New Delhi-110070 and working with Hoffland Finance Limited, 1207, Hemkunt, Rajindra Place, New Delhi-110008 (Branch Office -301, Sagar Complex, Opp. Jhankar, Preet Vihar, Delhi) has a net worth of Rs. 15,96,367/- as on 31.03.1996.*" Further, the Broker had maintained a savings bank A/c No. 6723 at Oriental Bank of Commerce, Safdurjung Enclave Branch, New Delhi and as per the account opening form, the address of Mr. Rakesh Mishra was 519, Ansal Chambers II, Bhikaiji Cama Place, New Delhi-110 006 and the telephone number was 6119286. It is pertinent to note that as per the copy of brief profile of Hoffland Finance Limited, the aforesaid address was that of the Assistant Vice President (Secretariat) of Hoffland Finance Limited. Mr. Rakesh Mishra was also a director

on the board of Keshavi Financial Services Private Limited, another company promoted by the Hoffland Group and member of DSE.

4. Further, from the letter dated July 28, 2003 received by SEBI from Mr. N C Pandey, director of Bharatendu Financial Services Private Limited (another Hoffland group entity) it was stated that Mr. Rakesh Mishra was one of the individuals in whose name the membership of stock exchanges was acquired. This had been confirmed by Mr. B. B Sharma, Chairman Hoffland Group before the police. Thus, it is clearly establishes that there were close linkages between the Broker and the Hoffland Group. It is also observed that the modus operandi in the instant case was similar to that followed by Hoffland group in acquiring other memberships around that time. I note that the conduct of the Hoffland Group has been investigated by the Police and that it is learnt that several prosecution cases have been initiated against it. Further, Hoffland Group has defaulted payments to its investors. Further, Mr. Rakesh Mishra was also been declared a Proclaimed Offender by the court of the Additional Sessions Judge Tis Hazari on March 17, 2006 in in CC NO. 133 of 2005 SEBI vs JVG Finance Limited) .

5. It stands established that the Broker does not fulfill the basic parameters such as financial Integrity, good reputation, character, etc to be considered as "Fit and proper Person" for the purpose of acting as a registered stock broker with SEBI. It is thus established that the Broker is not a fit and proper person as required under 5(e) of the Broker Regulations which required the member to be a "Fit and Proper Person". The Broker is not a fit and proper person in terms of the Fit and Proper Person Regulations as well as the Intermediaries Regulations. Therefore, I find that the member has failed to comply with the requirements of Regulation 5(A) and 5(e) of the Broker Regulations read with Regulation 38(3) along with Schedule II of the Intermediaries Regulations. The said failure would make the Broker unfit to operate in the securities market. It was further observed

by the Enquiry Officer that the Broker has violated Regulation 6A(d) of the Broker Regulations, as it had not paid the turnover fees including the interest, as mentioned above in this order. In this regard, I note that SEBI, vide order dated February 3, 2010 suspended the certificate of registration of the Broker till the time it pays the outstanding fees to SEBI. On the basis of the above findings, linkages of the entity with the Hoffland Group, incriminating facts pertaining to the Hoffland Group, available evidence, facts and circumstances of the case and applicable provisions of law, I conclude that the Broker is not a "Fit and proper Person" in terms of the Broker Regulations read with the provisions of the Intermediaries Regulations. Though, sufficient opportunities were provided to the Broker it did not avail of the same and instead kept itself away from the enquiry proceeding. Such a person, in the facts and circumstances deserves no leniency.

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 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008, hereby cancel the certificate of registration granted to the stock broker, M/s Rakesh Mishra (Registration no. INB 100945318), Member, Uttar Pradesh Stock Exchange Limited.

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: MARCH 8, 2011