BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. BM/AO- 52/2012]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

In respect of

RR Chokhani Stock Brokers Pvt. Ltd.

PAN No. AAACR7391E

In the matter of Bank of Rajasthan Ltd.

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an investigation into the affairs of Bank of Rajasthan Ltd. (hereinafter referred to as '**BoR**'/ '**the company**') during the period June 2007 to December 2009. Investigations revealed that the shareholding of the promoters of BoR with their PACs had increased from 46.80% in June 2007 to 63.15% in December 2009. Promoters along with their PACs increased their shareholdings by way of acquiring shares on the market. It was also observed that certain brokers, including **RR Chokhani Stock Brokers Pvt. Ltd.** (hereinafeter referred to as the '**Noticee**'/ '**broker**') traded for some clients who were related to the promoters of BoR and received payment for the trades from entities other than their clients.

2. In view of the above it was alleged that the broker violated Clause A (2) and A (5) of Schedule II prescribed under Regulation 7 of SEBI (Stock Broker and Sub-Broker) Regulations 1992 (hereinafter referred to as the '**Broker Regulations**') and SEBI's Circular SEBI/MRD/SE/Cir-33/2003/27/08 dated August 27, 2003 (hereinafter referred to as '**the Circular**'). Consequently, the above violation makes Noticee liable for monetary penalty under Section 15 HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**').

APPOINTMENT OF ADJUDICATING OFFICER

3. I was appointed as the Adjudicating Officer, vide order dated January 25, 2012, under Section 15 I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the **'Rules'**) to inquire into and adjudge under Section 15 HB of the SEBI Act, 1992, the alleged violation committed by the Noticee.

SHOW CAUSE NOTICE, HEARING AND REPLY

4. Accordingly, vide a Notice dated May 16, 2012 (hereinafter referred to as **'SCN'**) issued under Rule 4 of the Rules, the Noticee was asked to show cause as to why an inquiry should not be held against it and penalty be not imposed under Section 15 HB of the SEBI Act for the alleged violations specified in the SCN.

5. The Noticee replied to the SCN vide its letter dated May 29, 2012. Thereafter, the Noticee, vide hearing notice dated June 1, 2012, was granted an opportunity of personal hearing before me on June 22, 2012. However, vide letter dated June 18, 2012, the Noticee requested that the hearing be postponed. The request of the Noticee was acceded to, and the hearing was adjourned. The Noticee was granted another opportunity to appear before me on August 27, 2012, vide hearing notice dated August 8, 2012. Vide letter dated August 16, 2012 the Noticee was advised to submit, at the time of the hearing, a photocopy of its Bank Account Statements pertaining to the investigation period. Further, vide email dated August 27, 2012, the Noticee was also

advised to submit details of the source of funds received by it on behalf of its clients in certain instances, along with documentary evidence for the same. Subsequently, vide a letter dated August 27, 2012, the Noticee conveyed its inability to attend the personal hearing and once again requested that the same be adjourned. Thereafter, in the interest of natural justice, vide hearing notice dated September 4, 2012, a final opportunity for personal hearing was granted to the Noticee on September 20, 2012. The Noticee appeared for the hearing on the scheduled date, and made submissions before me. The Noticee also submitted its Bank Account Statements pertaining to the investigation period. At the time of the hearing, the Noticee was advised to submit its online bank statement for the dates on which the alleged third party payments were accepted by it. The Noticee submitted the same for October 10, 2008 and June 23, 2009 as it had availed online banking facility only post September 15, 2008. Noticee also submitted further details of the payments received by it vide its letter dated September 25, 2012. The submissions of the Noticee, are summarized below:

i) The Noticee was not aware of the third party payments as most of these were received through RTGS, where the payer's details were not available online.
ii) Such receipts were accepted not intentionally, but because of compulsion arising out of pay in/ pay out obligations. Thereafter rectification or reversal became difficult due to risk.
iii) The Noticee has always believed in compliance with statutory requirements.

CONSIDERATION OF ISSUES AND FINDINGS

6. I have examined the SCN, the submissions of the Noticee, made during the personal hearing and in its replies, and the documents available on record. I observe that the allegation against the Noticee is that it accepted payments from entities other than its clients in violation of SEBI's circular SEBI/MRD/SE/Cir-33/2003/27/08 dated August 27, 2003. Further, the Noticee is alleged to have failed to act with due skill, care and diligence in the conduct of the business and to have violated Clause A (2) and A (5) of Schedule II prescribed under Regulation 7 of the Broker Regulations.

7. Therefore, the issues that arise for consideration in the present case are :

a. Whether the Noticee violated SEBI's Circular SEBI/MRD/SE/Cir-33/2003/27/08 dated August 27, 2003?
b. Whether the Noticee violated Clause A (2) and A (5) of Schedule II prescribed under Regulation 7 of the Broker Regulations?
c. Do the above alleged violations, if any, on the part of the Noticee attract monetary penalty under Section 15 HB of the SEBI Act?
d. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

8. Before moving forward, it will be appropriate to refer to the relevant provisions of the Broker Regulations and the Circular, which read as under:

SEBI's Circular SEBI/MRD/SE/Cir-33/2003/27/08 dated August 27, 2003

Sub:- Mode of payment and delivery

3. All payments shall be received / made by the brokers from / to the clients strictly by account payee crossed cheques / demand drafts or by way of direct credit into the bank account through EFT, or any other mode allowed by RBI. The brokers shall accept cheques drawn only by the clients and also issue cheques in favour of the clients only, for their transactions. However, in exceptional circumstances the broker or sub-broker may receive the amount in cash, to the extent not in violation of the Income Tax requirement as may be in force from time to time.

Broker Regulations

Stock-Brokers to abide by Code of Conduct.

7. The stock-broker holding a certificate shall at all times abide by the Code of Conduct as specified at Schedule II.

SCHEDULE II

Code Of Conduct For Stock Brokers

A. GENERAL

(2) EXERCISE OF DUE SKILL AND CARE: A stock-broker, shall act with due skill, care and diligence in the conduct of all his business.

(5) COMPLIANCE WITH STATUTORY REQUIREMENTS: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.

9. I note from the client ledger maintained by the Noticee, the bank account statements of the Noticee and the replies filed by the Noticee, that the Noticee had received certain third party payments in respect of its clients. The details of the same are enumerated below:

Table I: Details of party payments received by the Noticee

Sr. No.	Date	Name of Client	Name of the entity who made the payment – other than the client itself and thus third party	Amount Rs.
1.	28/11/2007	Anshul Mercantile P. Ltd.	Cyber Infosystems and Technologies Ltd.	50 Lakh
2.	03/12/2007		Cyber Infosystems and Technologies Ltd.	100 lakh
3.	10/12/2007		Krishna Knitwear Technologies Ltd.	100 lakh
4.	17/12/2007		Krishna Knitwear Technologies Ltd.	200 lakh
5.	22/01/2008		Hotline Textile and Infrastructure Pvt. Ltd.	150 lakh
6.	22/01/2008		KSL and Industries Ltd.	25 lakh
7.	23/01/2008		Krishna Knitwear Technologies Ltd.	30.70 lakh
8.	23/01/2008		Hotline Textile and Infrastructure Pvt. Ltd.	10 lakh
9.	24/01/2008		Hotline Textile and Infrastructure Pvt. Ltd.	125 lakh
10.	30/01/2008		Cyberinfo Zeeboomba.com Ltd	13.32 lakh
11.	27/03/2008		Cyber Infosystems and Technologies Ltd.	60 lakh
12.	27/03/2008		Cyber Infosystems and Technologies Ltd.	60 lakh
13.	25/07/2008		Cyberinfo Zeeboomba .com Ltd.	55 lakh
14.	30/07/2008		21st Century Entertainment Pvt. Ltd.	45 lakh
15.	06/08/2008		Cyberinfo Zeeboomba .com Ltd	50 lakh
16.	06/08/2008		21st Century Entertainment Pvt. Ltd.	50 lakh
17.	10/08/2008		Jyotsana Developers Pvt. Ltd.	9 lakh
18.	04/07/2007	Avery Procon Pvt. Ltd.	Eskay K 'n' IT India Ltd.	23.13 lakh
19.	18/03/2008	Beta Trading Pvt. Ltd.	Krishna Kintwere Technologies Ltd.	50 lakh
20.	18/03/2008		Krishna Kintwere Technologies Ltd.	50 lakh
21.	18/03/2008		Krishna Kintwere Technologies Ltd.	50 lakh
22.	09/05/2008		Brescon Infra Pvt. Ltd.	100 lakh
23.	26/05/2008		Brescon Infra Pvt. Ltd.	100 lakh
24.	10/10/2008		Jyotsana Developers Pvt. Ltd.	26 lakh
25.	23/06/2009		Hotline Textile and Infrastructure Pvt. Ltd.	7.01 lakh
26.	04/07/2007	Megna Developers Pvt. Ltd.	Eskay K 'n' IT India Ltd.	14.98 lakh
27.	04/08/2007		K-Lifestyle and Industries Ltd.	50 lakh
28.	16/08/2007		K-Lifestyle and Industries Ltd.	25 lakh

10. Furthermore, I note that of the above third party payments, several third party payments were received by the Noticee on behalf of its clients through cheques and the others through RTGS. Details of third party receipts by the Noticee through cheques are as follows:

Table II: Details of payments received through cheques by the Noticee

Sr.No.	Date	Name of Client	Name of the entity who made the payment – other than the client itself and thus third party	Amount Rs.
1.	23/01/2008	Anshul Mercantile P. Ltd.	Krishna Knitwear Technologies Ltd.	30.70 lakh
2.	27/03/2008		Cyber Infosystems and Technologies Ltd.	60 lakh
3.	27/03/2008		Cyber Infosystems and Technologies Ltd.	60 lakh
4.	04/07/2007	Avery Procon Pvt. Ltd.	Eskay K 'n' IT India Ltd.	23.13 lakh
5.	18/03/2008	Beta Trading Pvt. Ltd.	Krishna Knitwear Technologies Ltd.	50 lakh
6.	18/03/2008		Krishna Knitwear Technologies Ltd.	50 lakh
7.	18/03/2008		Krishna Knitwear Technologies Ltd.	50 lakh
8.	26/05/2008		M/s Brescon Infra Pvt. Ltd.	100 lakh
9.	23/06/2009		Hotline Textile and Infrastructure Pvt. Ltd.	7.01 lakh
10.	04/07/2007	Megna Developers Pvt. Ltd.	Eskay K 'n' IT India Ltd.	14.98 lakh
11.	04/08/2007		K-Lifestyle and Industries Ltd.	50 lakh
12.	16/08/2007		K-Lifestyle and Industries Ltd.	25 lakh

11. Further, the details of third party receipts by the Noticee through RTGS are as follows:

Table III: Details of payments received through RTGS by the Noticee

Sr. No.	Date	Name of Client	Name of the entity who made the payment – other than the client itself and thus third party	Amount Rs.
1.	28/11/2007	Anshul Mercantile P. Ltd.	Cyber Infosystems and Technologies Ltd.	50 Lakh
2.	03/12/2007		Cyber Infosystems and Technologies Ltd.	100 lakh
3.	10/12/2007		Krishna Knitwear Technologies Ltd.	100 lakh
4.	17/12/2007		Krishna Knitwear Technologies Ltd.	200 lakh
5.	22/01/2008		Hotline Textile and Infrastructure Pvt. Ltd.	150 lakh
6.	22/01/2008		KSL and Industries Ltd.	25 lakh
7.	23/01/2008		Hotline Textile and Infrastructure Pvt. Ltd.	10 lakh
8.	24/01/2008		Hotline Textile and Infrastructure Pvt. Ltd.	125 lakh
9.	30/01/2008		Cyberinfo Zeeboomba.com Ltd	13.32 lakh
10.	25/07/2008		Cyberinfo Zeeboomba .com Ltd.	55 lakh
11.	30/07/2008		21st Century Entertainment Pvt. Ltd.	45 lakh
12.	06/08/2008		Cyberinfo Zeeboomba .com Ltd	50 lakh
13.	06/08/2008		21st Century Entertainment Pvt. Ltd.	50 lakh
14.	10/08/2008		Jyotsana Developers Pvt. Ltd.	9 lakh
15.	09/05/2008	Beta Trading Pvt. Ltd.	Brescon Infra Pvt. Ltd.	100 lakh
16.	10/10/2008		Jyotsana Developers Pvt. Ltd.	26 lakh

12. I note that the Circular explicitly mandates that *brokers shall accept cheques drawn only by the clients and also issue cheques in favour of the clients only, for their transactions.* In this regard, the Noticee has submitted that at times, due to the pay in requirements and ease of operation, its clients sometimes deposited cheques into their account directly. They had advised the client not to make payment from third party and proximity of pay in – payout of settlement and due to risk the reversible of these payments became practically impossible. I observe that there was not one instance but number of instances where the

Noticee received cheques from third party and that too for a period of more than one year. As the above have come to my notice from the documents collected during the investigation, it has not been denied by the Noticee that they allowed third party payments for the clients. Further I note that this activity is not a one off instance but continued for more than two years for which the information is available before me.

13. However, what is even more aggravating and pertinent to note is the appalling attitude demonstrated by the Noticee in its reply to the SCN in this matter. The Noticee while accepting the fact of the third party payments far from considering these instances as violations of the SEBI circular has instead in its submissions justified why it has indeed taken the third party payments and has argued before me for justification of the violations to be treated as normal.

14. It is to be clearly understood that the measures put in by SEBI aim to instill transparency and discipline in the dealings between clients and brokers. It is thus the duty of the registered intermediary to ensure compliance with the Circular. I do not find any effort taken by the Noticee to ensure compliance with the Circular and note the nonchalant and appalling attitude of the entity in justifying the violations. The submissions made by the Noticee are thus devoid of any merit.

15. Further, the Noticee has submitted that it was not possible for it to identify the source of funds received by way of Electronic Fund Transfers. As stated in para 5 above, the Noticee has submitted its Online Bank Statements for two dates, that is, October 10, 2008 and June 23, 2010. I note that of these two dates, an RTGS payment was received by the Noticee from third parties on October 10, 2012. I find from the Online Bank Statement for the date in question, as submitted by the Noticee, the following details appear for the relevant transaction:

Table IV: Particulars appearing in the Online Bank Statement of the Noticee for relevant transactions through RTGS

Sl. No.	Transaction ID	Value date	Description	Amount Rs.
1.	SB6208943	10/10/2008	RTGS/BRAJH08284130986/JYOTSANADEVELO/BRAJ	26 lakh

16. From the above extract of the online bank statement of the Noticee for the relevant dates, I note that the creditor of the funds in the RTGS is apparent from the face of the statement itself. From the statement it is observed that a third party, namely Jyotsana Developers Pvt. Ltd., had made RTGS transfers of Rs.26,00,000 on behalf of the client Beta Trading Pvt. Ltd. Thus a cursory glance of the statement reveals that the payment was received from third party. Hence the Noticee was very much in a position to ascertain from where the funds were received, if it had the willingness to do. Thus I do not find any merit in the argument placed by the Noticee that it was not possible to ascertain the transferor of funds in case of electronic fund transfers at the relevant time.
It has been stated by the Noticee that they availed of the online banking facility from September 15, 2008 onwards. It is observed from the table at para 11 that payment through RTGS was received even in 2007. Hence it is observed that RTGS facility was available to the Noticee but they availed of the facility much later. Thus it is not the case of the noticee that the RTGS details were not made available to it by the Bank, moreover it is an accepted fact that the bank provided the facility which the Noticee did not avail of, however it is the proposition put forth by the Noticee that it did not access the online account itself to know the details of the RTGS transfers.

17. The Noticee was asked during the hearing to explain how they exercised due diligence to ensure that the amount has come from its client. The Noticee vide their letter dated September 25, 2012 submitted that they insist that the client provides details of RTGS such as the Unique Transfer Reference (UTR) number, and if despite instructions the client makes RTGS transfers through some other bank, the Noticee discontinues business with that client. However, there have been several third party payments through RTGS on behalf of the Notice's clients, and Noticee has not been able to demonstrate how they exercised their due diligence in the instant cases. Moreover, I am of the considered view that in a situation such as the case at hand, where the name of the transferor is apparent from even a bare perusal of the broker's bank statement, such a submission is irrelevant and cannot be accepted. This further demonstrates that attitude of the Noticee with respect to the third party transfers. The only excuse the Noticee wishes to put forth in case of the RTGS credits is that it had very little control on the

credit once the RTGS has been executed in its account. However, this is merely an excuse and does not stand given the attitude of the Noticee as mentioned above. I do not find any merit in the submission of the Noticee.

18. It is the responsibility of the broker to ensure that payments are received directly from relevant clients and not third parties. A plain scrutiny of its bank account statements should have alerted the Noticee that payments were coming in from entities other than its clients. Thereafter, the Noticee should have taken expedient steps to ensure that funds received from third parties are exceptionally dealt with and suitable explanations should have been asked from the client when such blatant third party moneys were received. Neither is it the case of the Noticee, nor is there is anything on record to suggest that such steps were indeed taken.

19. It is so blatantly evident that one would needed to be blinded by some other reason not to notice these seemingly obvious information that the transfers were not made by its client, but a third party. Such a conduct, to my mind, borders more on the side of connivance rather than the sheer lack of due diligence and indicates an attitude to merely let things pass until they are adversely noticed by monitoring authorities.

20. Such an attitude, as demonstrated by the registered entity, is reproachable and deserves to be treated in fitting manner. Given the above, the Noticee cannot escape liability.

21. In light of the above, I am of the view that **the Noticee has violated the provisions of SEBI's Circular SEBI/MRD/SE/Cir-33/2003/27/08 dated August 27, 2003.**

22. Further, since the Noticee is a registered broker, it is required to adhere to the Code of Conduct prescribed for Stock-Brokers under the Broker Regulations. The conduct of the broker in this case was devoid of due skill, care and diligence, especially since he failed to take any measures to rectify the error, even *post facto*. Further, due to its violation of the Circular, the broker has failed to adhere to the aforesaid Code of Conduct prescribed under the Broker Regulations. In view of the same, I find that the Noticee failed to exercise due care and diligence in discharge of its duty as a broker and **violated Clause**

A (2) and A (5) of Schedule II prescribed under Regulation 7 of the Broker Regulations.

23. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant."*

24. In view of the violation SEBI's Circular SEBI/MRD/SE/Cir-33/2003/27/08 dated August 27, 2003 and Clause A (2) and A (5) of Schedule II prescribed under Regulation 7 of the Broker Regulations, **the Noticee is liable for monetary penalty under Section 15 HB of SEBI Act, 1992** which reads as follows:

15HB.Penalty for contravention where no separate penalty has been provided.-
Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.

25. While determining the quantum of penalty under Section 15 HB of SEBI Act, 1992 it is important to consider the factors stipulated in Section 15J of SEBI Act, 1992 which reads as under:-

15J Factors to be taken into account by the adjudicating officer:
While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of investors as a result of the default;
(c) the repetitive nature of the default."

26. It is difficult, in cases of such nature, to quantify exactly the disproportionate gains or unfair advantage enjoyed by an entity and the consequent losses suffered by the investors. I have noted that the investigation report also does not dwell on the extent of specific gains made by the Noticee. However these types of third party payments are threat to the safety and integrity of market and thus loss to the investors to that extent. Further, I observe that default by the Noticee occurred on a several instances hence the default is repetitive.

ORDER

27. After taking into consideration all the facts and circumstances of the case, I impose a penalty of Rs.5,00,000/- (Rupees Five Lakh only) under Section 15 HB of the SEBI Act, 1992 against the Noticee which will be commensurate with the violations committed by it.

28. The Noticee shall pay the said amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Shri Sharad Sharma, General Manager, Investigations Department-4, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

29. In terms of Rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: **September 28, 2012** **BARNALI MUKHERJEE**

Place: **Mumbai** **ADJUDICATING OFFICER**