

SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: DR. K.M. ABRAHAM, WHOLE TIME MEMBER

ORDER

UNDER REGULATION 28 (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008 AGAINST PRAKASH NAHATA & CO. (REGISTRATION NO. INB030062815) IN THE MATTER OF ASHIKA CREDIT CAPITALS LIMITED.

1. Securities and Exchange Board of India (hereinafter referred to as SEBI) noticed, through certain press reports, about certain irregularities in the dealings of shares of some companies listed on Calcutta Stock Exchange Association Limited (CSE). Subsequently, SEBI conducted preliminary analysis of trading data in respect of buying, selling, dealing in the shares of such companies including Ashika Credit Capitals Limited (hereinafter referred to as the company) for the period July 2001 to October 2001 (hereinafter referred to as the relevant period). It was *inter alia* observed that the average share price of the company increased from Rs.5.05/- to Rs.43.70/- during the relevant period with substantial trading volume at CSE. Thereafter, the investigation conducted by SEBI *inter alia* observed that the stock brokers namely Mr. Dinesh Kumar Modi, Swadha Securities Private Limited, M/s. Mukesh Dokania & Co and M/s. Prakash Nahata & Co. (hereinafter referred to as the Broker) executed substantial trades in the shares of the company at CSE during the relevant period. CSE also furnished its report, which *inter alia* covered the daily figures of price, volume,

value, net obligation of the stock brokers who had traded in various scrips. During the relevant period, 18,77,376 shares of the company were traded at CSE. It was found that the Broker had executed off market trades during the relevant period. The Broker bought and sold 1,94,100 shares of the company through off market deals, prima facie without reporting to CSE. Besides, the delivery of payment had not taken place within twenty four hours of the transaction. In view of the above, it was alleged that the Broker prima facie violated the provisions of Securities and Exchange Board of India Act, 1992, Securities Contracts (Regulations) Act, 1956 (hereinafter referred to as the Act) etc.

2. In the facts and circumstances, SEBI, vide order dated September 18, 2004 appointed an Enquiry Officer under the then existing provisions of Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as Enquiry Regulations) to enquire into the alleged violations, as mentioned above. The Enquiry Officer conducted the proceedings under the provisions of Enquiry Regulations and submitted his report dated December 19, 2006 recommending the imposition of penalty of suspension of the certificate of registration of the Broker for a period of 6 months. Subsequently, a show cause notice dated December 28, 2006 was also issued by SEBI, to the Broker, as stated therein. A copy of the Enquiry Report was also forwarded to the Broker along with the said notice. Though, the said letter was acknowledged by the Broker (on January 5, 2007), it had failed to file its submission. Thereafter, SEBI granted an opportunity of hearing to the Broker on May 23, 2008. The Broker failed to appear for the hearing. Thereafter, SEBI granted various opportunities to the Broker, vide letters dated July 25, 2008 and October 1, 2008. However, even after affording various opportunities, the Broker chose not to respond to the letters

of SEBI. Considering the facts and circumstances of the case, I do not consider it necessary to give a further opportunity to the Broker and, therefore, I proceed with the matter on the basis of the available materials on record, in terms of the provisions of Securities and Exchange Board of India (Intermediaries) Regulations, 2008. The issue for consideration in the present matter is whether the Broker violated the provisions of the Act and the provisions of SEBI circular dated September 14, 1999 as observed by the Enquiry Officer. The execution of the 'off the floor' transactions by the Broker is not disputed either before the Enquiry Officer or before me. Details of some of the 'off the floor' transactions (including the details of the contract notes) executed by the Broker are specified below:

Trade Date	Contract No	Order/ Trade No/ Time	Quantity	Rate- Rs. (including Brokerage)	Bought for (Client Name)	Bill Date
27.08.2001	5	Nil	4000 10000 10000	41.06 41.06 41.06	Sunshine Sales Pvt. Ltd.	03.09.2001
12.10.2001	10	Nil	5000 3400	44.25 44.25	Escorts Merchant P Ltd.	19.10.2001
15.10.2001	13	Nil	2000 10000 10000	43.06 43.06 43.06	Sigma Suppliers Pvt. Ltd	22.10.2001
15.10.2001	14	Nil	8000 10000 10000	42.06 42.06 42.06	Solar Mercantiles (Pvt.) Ltd	22.10.2001

3. The above transactions were not reported to CSE and neither the delivery nor payment had taken place within twenty four hours of such transactions. The Broker admitted the allegations before the Enquiry Officer. The Enquiry Officer narrated the submission made by the Broker (during the course of hearing) in his Report and the same is quoted below:

“Qn1. It is alleged that the member has not reported the ‘off-the-floor’ transactions to CSE (details given in the notice). Please explain.

Reply: Yes, I accept the observation.

Qn2. It is alleged that none of the ‘off-the-floor’ transactions (mentioned in the notice) have resulted in delivery/payment within 24 hours of the execution of the trade. Thereby no spot delivery/payment has taken place in respect of these transactions in violation of Section 2(i) of Securities Contracts (Regulation) Act, 1956. Please explain.

Reply: Yes, I accept the observation.

Qn3. It is alleged that all these trades (mentioned in the notice) were negotiated/ cross deals and not executed on the trading mechanism of the exchange in the price and order matching mechanism.

Reply: Yes, I accept the observation”.

4. I note that the Broker had executed the bills after a gap of more than five to six days of the transactions which by itself indicates that the transactions were not settled within twenty four hours of the transactions dates. Therefore, they are not spot delivery contracts as defined under Section 2(i) of the Act. In order to qualify as a spot delivery contract, a contract for sale of shares mandatorily *inter alia* provide for the actual delivery of shares and payment of price either on the same day as the date of contract or on the next day. Admittedly, off market transactions of the Broker had not resulted in delivery/payment within twenty four hours of the execution of the trades. Needless to say, the transactions of the Broker cannot

be termed as spot delivery contracts. Further, the execution of off market trades admittedly made by the Broker is in violation of SEBI circular dated September 14, 1999. Relevant part of the said circular dated September 14, 1999 is quoted below:

".....All negotiated deals (including cross deals) shall not be permitted in the manner prescribed in circulars mentioned above and all such deals shall be executed only on the screens of the exchanges in the price and order matching mechanism of the exchanges just like any other normal trade".

5. The contents of the said circular was reiterated by CSE in its notice dated September 16, 1999. I note that the Broker had executed substantial off market trades involving 1,94,000 shares of the company and the average rate of the trade was Rs. 43/- per share. Further, contract notes issued by the Broker do not have pre-printed/system generated number, order/trade number, which would further fortify the conclusion that the trades were not executed on the price and order matching mechanism of CSE. The above findings would also lead to the conclusion that the Broker had failed to comply with his duties as an intermediary functioning in the securities market. The facts and circumstances clearly indicate that the Broker had failed to maintain high standards of integrity, promptitude, fairness and had not exercised due skill, care and diligence in the conduct of his business. He is duty bound to comply with all statutory requirements *inter alia* issued by SEBI or CSE as the case may be. The said requirements are put in place in the interest of securities market in general. In the present case, the Broker failed to comply with the norms. The Broker had failed to comply with his duties as expected of a SEBI Registered intermediary. The Broker failed to submit any

explanation to controvert the findings of the Enquiry Officer, despite various opportunities. In the facts and circumstances, it is established that the Broker violated notice of SEBI circular dated September 14, 1999 read with CSE notice dated September 16, 1999. Further, the transactions of the Broker cannot be termed as spot delivery contracts, as it failed to satisfy conditions specified in section 2(i) of Securities Contracts (Regulations) Act, 1956. The violations committed by the Broker calls for a penalty as ordered herein under.

6. In view of the foregoing, I, in exercise of the powers conferred on me in terms of 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, suspend the certificate of registration of the stock broker namely, M/s Prakash Nahata & Co. (Registration no. INB 030062815), Member, Calcutta Stock Exchange Association Limited, for a period of one month.

7. This order shall come into force immediately on expiry of twenty one days from the date of this order.

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

Place: Mumbai

Date: December 5, 2008