

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. N. M. LOHIA & CO. IN THE MATTER OF TOPLIGHT COMMERCIAL LIMITED

1. The Securities and Exchange Board of India (hereinafter referred to as SEBI) had received a reference from the Ministry of Finance, Government of India in respect of certain reports that shares of some illiquid companies were traded in a circular pattern among certain members of a group operating collusively. Subsequently, the same shares were later on sold at highly inflated prices. On the basis of the said reference, SEBI initiated investigation into the dealing in the shares of such companies which were listed at Calcutta Stock Exchange Association Limited (hereinafter referred to as CSE). One such company was Toplight Commercial Limited (hereinafter referred to as the company). The investigation in respect of the company was conducted for the period January 21, 2004 to August 03, 2004 (hereinafter referred to as the period of investigation) with regard to the buying, selling and dealing in the shares of the company and to find out as to whether the said company, stock brokers, intermediaries and traders had contravened the provisions of the Securities and Exchange Board of India Act, 1992 and the Rules/Regulations framed there under including the Securities and Exchange Board of India (Prohibition of

Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as PFUTP Regulations) and the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as Stock Brokers Regulations). The investigation conducted by SEBI found that the average price of the shares of the company was Rs.23.50/- per share on January 01, 2004, which went up to Rs.322/- on August 03, 2004, a manifold increase in just seven months.

2. The investigation conducted by SEBI revealed that certain stock brokers who had traded in the shares of the company had acted as counter party stock brokers and the trades were done by matching the orders themselves. It appeared that the stock brokers in collusion with their clients had placed simultaneous buy and sell orders for the same quantity and price. The investigations had identified four stock brokers, namely, N. M. Lohia & Co., S. Jhunjhunwala & Co., Prakash Nahata & Co. and Subh Stock Broking Private Limited based on their pattern of trading and the volumes contributed by them in the shares of the company during the investigation period. The major findings of the investigation were that most of their (said stock brokers) trades were client to client which have been executed on a single terminal of the same stock broker. These stock brokers were found to have allowed their clients to simultaneously place both buy and sell orders for the same quantity and price. This consequently, led to the price rise and manipulation in the shares of the company. Instances of matching trades between the said stock brokers among themselves have also been noticed from the data provided by CSE. These trades are of identical quantities and rates. On the basis of the material collected during the investigations, it was *inter alia* alleged that the trade practices of N. M. Lohia & Co. (hereinafter referred to as the Broker), while dealing in the shares of the company were unfair and fraudulent. The Broker was therefore alleged to have contravened the provisions of Regulation 4(2) (a),

(e), (o) and (p) of the PFUTP Regulations and Clauses A(1) to A(5) and Clause B(4)(a) of the Code of Conduct specified in Schedule II of the Stock Brokers Regulations.

3. Accordingly, SEBI, vide order dated November 2, 2006 read with a subsequent order dated November 23, 2007 appointed an Enquiry Officer under the provisions of the 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 committed by the Broker. The Enquiry Regulation was since repealed by the Securities and Exchange Board of India (Intermediaries) Regulations, 2008. The Enquiry Officer, after considering the facts and circumstances of the case and the materials available on record, recommended that the certificate of registration issued by the SEBI to the Broker be suspended for a period of four months, vide Enquiry Report dated January 22, 2009.

4. Pursuant to the submission of the Enquiry Report, a notice dated January 28, 2009 was issued by SEBI to the Broker asking it to show cause as to why the penalty as recommended by the enquiry officer should not be imposed against it. The Broker replied to the show cause notice, vide letter dated February 09, 2009. The submissions of the Broker in brief are the following:

- i. that it did not increase/decrease the price of the said scrip intentionally,
- ii. that all trades were executed on behalf of its clients as per their instructions,
- iii. that clients trade on their own sweet will and the reasons for trading are not disclosed as a matter of trade secret,

- iv. that no action be taken against it as their firm is inoperative for the last 3 years
- v. that it does not have any source of income

The Broker further requested that a lenient view be taken in the matter.

5. I have examined the show cause notice dated January 28, 2009 issued to the Broker, its reply dated February 09, 2009 and other materials available on record. On the basis of the aforesaid documents, the following issues arise for my consideration:

- i. Whether the Broker had executed substantial number of trades (including synchronised/self trades) in the shares of the company, during the period of investigation?
- ii. Whether the aforesaid trades of the Broker had impacted the price of the shares of the company?
- iii. Whether the Broker had violated the provisions of the PFUTP Regulations and the Stock Brokers Regulations, as alleged against it?
- iv. What would be the penalty that needs to be imposed on the Broker if it is proved that it had violated the said Regulations ?

The issues raised above have been dealt with in seriatim in the ensuing paragraphs.

6. I note that the shares of the company witnessed a sharp increase during the investigation period. The price went up from Rs.23.50/- on January 01, 2004 to Rs.322/- on August 03, 2004. This increase was not supported by any strong fundamentals of the company. It was observed that the trades of the stock brokers, namely, S. Jhunjhunwala & Co., Prakash Nahata & Co., Subh Stock

Broking Private Limited and the Broker accounted for around 92% of the total trading in the shares of the company at the CSE during the period of investigation. The Broker was found to have transacted in 3,06,980 shares of the company contributing to around 33% of the total trading volume in the said shares at CSE, during the said period. The table below would illustrate the trade details of the Broker in the shares of the company, for the relevant period:

No. of shares bought	% to Total Buy	No. of shares sold	% to Total Sell	Total no. of shares traded	% to Total Buy & Sell
165990	36%	140990	30%	306990	33%

From the table, it can be seen that the Broker had purchased 1,65,990 shares (constituting 36% of the total buy) and had sold 140990 shares (constituting 30% of the total sell). The Broker had in total, traded 306980 shares which constituted 33% of the total trades in the CSE at the relevant time. These facts were provided to the Broker in the show cause notice issued by the Enquiry Officer and remain undisputed before me.

7. The investigation conducted by SEBI observed that, out of the 306980 shares traded by the Broker in the shares of the company, trading in 281980 (91.85%) shares were in the nature of 'cross deals'. Cross deal refers to a transaction when the buyer and seller have a common stock broker. Besides, the trades in 2,73,680 shares (out of the total 306980 shares traded by the noticee) by the Broker were 'self trades'. I note that, the Broker in its reply to the show cause notice issued by the Enquiry officer, *inter alia* stated that it had some transactions in the shares on behalf of its clients. The order and trade log analysis proves that the Broker had acted as a counter party stock broker in

almost all the trades, except a few. The trade details of the Broker in the shares of the company during the period of investigation were provided to it along with the show cause notice issued by the Enquiry Officer. The said trades are not disputed by the Broker. The Broker contended that it had executed trades on behalf of its clients from January 21, 2004 to February 09, 2004 wherein the price of shares of the company rose from Rs.41.60/- to Rs.59.05/-. I also note that the Broker had executed trades from May 21, 2004 to June 06, 2004 when the share price was in the range of Rs.162/- to Rs.212/-. Thus, it is established that the Broker traded substantially in the shares of the company during the period of investigation. What is more serious is that majority of its trades were cross deals/self trades. In a cross deal, the stock broker would be aware of both the clients (buy and sell) and the execution of trades would be pursuant to such knowledge. Majority of his trades were cross deals. Thus, the Broker was a necessary party in the execution of such pre planned trades. It cannot absolve itself from the liability.

8. The next question that comes up for determination is whether the trades of the Broker had impacted the price of the shares of the company during the relevant period. The Broker was found to have placed both buy and sell orders of identical quantity and price in such a way that its buy orders matched with its corresponding sell orders resulting in trades. Further, it is found that the Broker was placing such orders within a gap of few seconds only. Therefore, the trades get executed by matching and synchronisation. Since the trades were squared off, the delivery was nil or negligible. Admittedly, some of its trades were self trades. Thus, the trades did not result in any transfer of beneficial ownership. The details of the matching transactions of the Broker in the shares of the company, was provided to the Broker (along with the show cause notice issued by the Enquiry Officer). But the Broker did not controvert these transactions. On the other hand, the reply of the Broker was that its trades were as per the

instructions of its clients. In its reply to the show cause notice (issued by the Enquiry Officer), the Broker admitted that it had carried out transactions in the shares of the company between January 21, 2004 to February 9, 2004 wherein the price range was Rs.41.60/- to Rs.59.05/-. I also find that the Broker executed trades between May 21, 2004 to June 6, 2004, when the share price was hovering around Rs.162/- to Rs.212/- .

9. I note that the investigation period was from January 2004 to August 2004. The Broker had traded in the shares of the company from January 01, 2004 till July 30, 2004 in 195 trades. Out of the said 195 trades, 152 trades were self deals. I also find that on many days (details of such days are mentioned in Annexure II to the show cause notice issued by the Enquiry Officer), the Broker was the lone buyer and seller at CSE in the shares of the company during the period of investigation. It is seen that on June 10, 2004, the Broker was the sole trader in the shares of the company and traded in 32200 shares (both buy and sell). The trades were self trades i.e. the Broker itself was the client on both sides (buy and sell). The orders have been placed at Rs.212/- when the previous day's closing price was Rs.211/-. All the trades by the Broker had been squared off during the day leaving no scope for any settlement of the trades. Numerous such instances committed by the Broker are noticed. The table below would depict as to how the Broker had managed to impact the price of the shares of the company by a small margin over the period as shown in the table below:

Date	Previous day Closing price(Rs)	Opening Price (Rs)	Exchange volume	Volume created by the Broker	% Increase in share price
02.01.2004	23.50	24.65	400	400	4.9
05.01.2004	24.65	25.85	400	400	4.9
06.01.2004	25.85	27.10	400	400	4.8

Date	Previous day Closing price(Rs)	Opening Price (Rs)	Exchange volume	Volume created by the Broker	% Increase in share price
07.01.2004	27.10	28.40	500	500	4.8
08.01.2004	28.40	29.80	600	600	4.9
09.01.2004	29.80	31.25	400	400	4.9
12.01.2004	31.25	32.75	500	500	4.8
13.01.2004	32.75	34.35	400	400	4.9
15.01.2004	34.35	36.05	400	400	4.9
16.01.2004	36.05	37.80	400	400	4.9
19.01.2004	37.80	39.65	400	400	4.9
20.01.2004	39.65	41.60	2000	2000	4.9
21.01.2004	41.60	43.65	500	500	4.9
22.01.2004	43.65	45.80	400	400	4.9
27.01.2004	45.80	48.05	400	400	4.9
28.01.2004	48.05	50.30	30000	15000	4.7
29.01.2004	50.30	52.75	400	400	4.9
30.01.2004	52.75	55.30	20000	10000	4.8
04.02.2004	55.30	57.00	400	400	3.1
05.02.2004	57.00	59.05	500	500	3.6
09.02.2004	59.05	61.50	400	400	4.1
21.05.2004	155.40	162.00	18000	12000	4.2
24.05.2004	162.00	169.00	14100	14000	4.3
25.05.2004	169.00	174.50	11000	11000	3.3
26.05.2004	174.50	182.00	19000	11000	4.3
27.05.2004	182.00	186.50	5000	5000	2.5
31.05.2004	186.50	195.00	27000	27000	4.6
02.06.2004	195.00	202.50	16000	16000	3.8
04.06.2004	202.50	208.00	23200	3200	2.7
07.06.2004	208.00	209.00	3400	3400	0.5
08.06.2004	209.00	211.00	14400	14400	1.0
09.06.2004	211.00	211.00	5000	5000	0.0
10.06.2004	211.00	212.00	32200	32200	0.5

Thus, undoubtedly, the Broker was able to gradually increase the price of the shares of the company by placing orders successively at prices higher than the previous day's closing price. Thus, in the facts and based on the material available before me, I find that the Broker was instrumental in influencing the price of the shares of the company. Coupled with the fact that majority of its

trades were in the nature of cross deals, the involvement of the Broker in such price movement is manifestly evident. Thus, I am of the view that the Broker was instrumental in the increase in the share price of the company while trading in the said shares during the period of investigation. The Broker should not have volunteered itself to be a party to such trades (cross deal/self trades) knowing fully aware that both the clients (buy and sell) were executing continuous and consistent synchronised trades at regular intervals. Such trades, in general, were executed at a higher rate than the previous one. Hence, one can, without any doubt hold that these trades executed by the Broker were intended to create price rise in the shares of the company, artificially.

10. With respect to the synchronisation of trades done by the Broker, I find that the same is obvious from the orders placed by it. The details of the orders which were placed by the Broker along with the time and quantity have been furnished to it, in the show cause notice issued by the Enquiry Officer. The said order log would show that the Broker had placed orders on both the buy and the sell side for the same quantity and price (though price was higher than the previous days' price). Further more, most of its trades were cross deals. These trades cannot be executed unless there was unity of minds among the Broker and the clients involved in such transactions. Considering the fact that most of its trades were cross deals, the Broker also cannot take the plea that it was unaware of the clients on both sides. I note that the Enquiry Officer has also pointed out an instance when the buy and the corresponding sell order had matched by synchronisation. No explanation was offered by the Broker in respect of the said observation of the Enquiry Officer. Thus, complicity of the Broker with regard to the synchronised trades is evident from its trading pattern. I am fully convinced that the Broker had executed trades by placing orders for the same quantity and price within little or no time difference between the

corresponding orders, when such orders got matched by synchronisation. In the facts and circumstances, these trades were found to have executed only with the intention of manipulating the share price of the company. The Broker submitted that it did not increase/decrease the price of the said shares of the company intentionally and that all trades were executed on behalf of their clients as per their instructions. In view of the findings as recorded hereinabove, I find no merit in the said submissions.

11. The next important question would be whether by its act or omission, the Broker had contravened the relevant provisions of the PFUTP Regulations and the Stock Brokers Regulations alleged against it. The Broker had traded continuously in the shares of the company in both the buy and the sell positions. Such self trades were squared off without any delivery obligation to CSE. Further, placing orders with a price higher than the previous days' trading price for such self trades clearly amounts to an act of manipulation in the price of the shares of the company. The fact that the majority of the trades of the Broker were cross deals indicate the level of involvement of the Broker in executing synchronised trades and in inflating the share price of the company. Thus, it can be concluded that the Broker contravened the provisions of Regulation 4 (2) (a) and (e) of the PFUTP Regulations. While holding the Broker guilty of contravening the relevant provisions of the PFUTP Regulations, I place reliance in the observation of the Hon'ble Securities Appellate Tribunal in the matter of Ketan Parekh, where the Tribunal observed thus:

"Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available. The nature of the transaction executed, the frequency with

which such transactions are undertaken, the value of the transactions, whether they involve circular trading and whether there is real change of beneficial ownership, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn."

12. By entering into such deceptive transactions, the Broker did not uphold the expected standards of integrity and fairness in its conduct. It also did not exercise due care while executing such transactions. Further, by placing orders in the nature of self trades, the Broker had indulged in deceptive trade practices which distorted the market. Needless to say the Broker failed to act with due skill, care and diligence in the conduct of its business in respect of the transactions in the shares of the company during the period of investigation. By doing so, the Broker had contravened the relevant provisions of law. I, therefore have no hesitation in holding the Broker guilty for having contravened the provisions of Regulation 7 of the Stock Brokers Regulations read with Clause A(1) to A(5) of the Code of Conduct prescribed for stock brokers under Schedule II of the Stock Brokers Regulations. With respect to the charge of the Broker violating the provisions of Regulation 4 (2) (o) of the PFUTP Regulations and Clause B (4) (a) of the Code of Conduct for Stock Brokers under the Stock Brokers Regulations, I find there is no material to prove that the Broker had encouraged its clients to deal in securities with the object of enhancing his brokerage or commission. In the absence of any material either in the show cause notice or the Enquiry Report, I am inclined to absolve the Broker of the said charges. In respect of the charge of violating Regulation 4(2)(p) of the PFUTP Regulations, I note that the Enquiry Officer has given benefit of doubt to

the Broker by observing that its contention that it had executed its trades on behalf of its clients could be accepted.

13. Taking into consideration all the facts and circumstances of the case and the available material on record, I do not find any reason to disagree with the recommendation of the Enquiry Officer and the present proceedings is disposed as ordered herein under. I note that the present case has been initiated under the provisions of the Enquiry Regulations. Though, the Enquiry Regulations was repealed with effect from the notification of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 anything done and any action taken under the Enquiry Regulations before the publication of the 2008 Regulations (mentioned above) in the Official Gazette are deemed to have been done or taken or commenced under the corresponding provisions of the 2008 Regulations. Therefore, this order is being passed under the corresponding provisions of the Securities and Exchange Board of India (Intermediaries Regulations), 2008.

14. 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 the Securities and Exchange Board of India (Intermediaries) Regulations, 2008, hereby suspend the certificate of registration of the stock broker viz. M/s. N. M. Lohia & Co. [Registration No. INB 030051219], Trading Member, The Calcutta Stock Exchange Association Limited, for a period of four months.

15. This order shall come into force immediately on the 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: April 20, 2009