

BEFORE THE 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 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 and were later on sold at highly inflated prices. Thereafter, 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 01, 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 thereunder 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 executed matched trades in the shares of the company among themselves. The investigation conducted by SEBI had identified four stock brokers, namely, M/s N. M. Lohia & Co., M/s S. Jhunjhunwala & Co., M/s 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 (above mentioned stock brokers) trades were client to client which have been executed on a single terminal of the same stock broker. These stock brokers were alleged to have allowed their clients to simultaneously place both buy and sell orders for the same quantity and price, which 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. On the basis of the material collected during the investigations, it was *inter alia* alleged that the trade practices of M/s Prakash Nahata & 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 Regulations 4(2)(a), (e) and (o) and Regulation 8(1) of 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. Thereafter, SEBI, vide order dated November 02, 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. Since, the Enquiry Regulations was repealed with effect from the notification of Securities and Exchange Board of India (Intermediaries) Regulations, 2008, the Designated Authority (hereinafter referred to as the Enquiry Officer) submitted his report dated January 28, 2009 under the provisions of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 and recommended to suspend the certificate of registration of the Broker for a period of six months. Subsequently, a notice dated February 04, 2009 was issued by SEBI to the Broker advising it to show cause as to why the penalty as recommended by the Enquiry Officer should not be imposed against it. The Broker was advised to reply to the show cause notice within twenty one days of the receipt thereof. It was also informed that, in case of failure, it would be presumed that it had no explanation to offer and SEBI shall be free to take such action in the manner as it deemed fit. 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 February 04, 2009), it had failed to make its submission. As the Broker failed to file the reply, a reminder was issued to it by SEBI on March 31, 2009 which was also acknowledged by the Broker on April 01, 2009. I note that sufficient opportunity was provided to the Broker to file his submissions. However, the Broker chose not to respond. Considering the facts and circumstances of the case, I do not consider it necessary to give a further opportunity to the Broker and, therefore, proceed with the matter on the basis of the available material on record, in terms of the provisions of Securities and Exchange Board of India (Intermediaries) Regulations, 2008.

4. I have considered the Enquiry Report, the show cause notice dated February 04, 2009, the subsequent SEBI letter dated March 31, 2009 and other material available on record. I note that the shares of the company witnessed a sharp increase during the investigation period. The price rose 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 certain stock brokers, namely, M/s N. M. Lohia & Co., Ms/ S. Jhunjhunwala & 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 1,89,300 shares of the company contributing to around 20% of the total trading volume in the said shares at CSE, details of which are given below.

No. of shares bought	% to Total Buy	No. of shares sold	% to Total Sell	Total no. of shares traded	% to Total Buy & Sell
65,400	14%	1,23,900	27%	1,89,300	20%

The above mentioned trade details were provided to the Broker along with the show cause notice issued by the Enquiry Officer. However, no steps were taken by the Broker to controvert such transactions and the same remained undisputed before me.

5. The investigation conducted by SEBI observed that, out of the 1,89,300 shares traded by the Broker in the shares of the company, trading in 1,27,100 (67.14%) shares were in the nature of 'cross deals'. The extent of cross deals and matched transactions executed by the Broker is tabulated below:

Name and address of the stock broker	Cross and Matched transactions					
	M/s S. Jhunjhunwala & Co.		Broker		Subh Stock Broking Private Limited	
	Qty	%	Qty	%	Qty	%
Broker	2000	1.05	127100	67.14	55600	29.37

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 extent of self trades of the Broker is tabulated below:

Self trades through own terminal	% to Total Volume of the Broker	Buy for self through terminal	Sell for self through terminal
123380	65	61690	61690

The above mentioned trades are not disputed by the Broker. It is pertinent to note that the Broker had executed trades from March 09, 2004 to July 12, 2004 when the share price was in the range of Rs.64.50 to Rs.299/-. As explained above, most of the Broker's trades were self trades. The Broker also executed synchronized trades with other stock brokers. Thus, it is established that the Broker traded substantially in the shares of the company during the period of investigation. The Broker was a necessary party in the execution of such pre-planned trades. The substantial trades of the Broker in the shares of the company *inter alia* increased its share price artificially.

6. The trades of the Broker necessarily 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 was found that the Broker was placing such orders within a gap of few seconds only. Therefore, the trades got executed by matching and synchronization. Admittedly, some of its trades were self trades. These 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. As the broker did not dispute the execution of the above mentioned trades, I do not consider it necessary to reiterate the said trade details in this order.

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
09.03.2004	61.50	64.50	49900	49900	4.9
11.03.2004	64.50	66.50	40000	40000	3.1
19.04.2004	72.40	74.50	100	50	2.9
21.04.2004	74.50	77.90	100	50	4.6
22.04.2004	77.90	81.55	100	50	4.7
28.04.2004	93.45	97.90	100	50	4.8
30.04.2004	102.60	107.50	100	50	4.8
05.05.2004	112.75	118.10	100	50	4.7
14.05.2004	141.60	148.00	10000	10000	4.5
18.05.2004	148.00	155.00	6600	6600	4.7
15.06.2004	221.00	228.00	2200	200	3.2
16.06.2004	242.50	265.00	18600	17600	9.3
17.06.2004	266.00	288.50	20000	4000	8.5
18.06.2004	287.50	295.00	39700	7900	2.6
21.06.2004	294.90	298.00	26800	6200	1.1

7. Needless to say, 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, 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. The Broker should not have volunteered itself to be a party to such trades. The Broker also should not have executed synchronized trades. The Broker was found to have executed synchronized trades. These trades cannot have been executed unless there was unity of minds among the entities involved in such transactions. The details of the orders which were placed by the Broker along with the time and quantity had been furnished to it, along with 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). The complicity of the Broker with regard to the synchronized 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 synchronization. In the facts and circumstances, these trades were found to have been executed only with the intention of manipulating the share price of the company. These trades executed by the Broker were intended to create manipulation in the share price of the company. Needless to say, the trades of the Broker in the shares of the company created misleading appearance of trading. The Enquiry Officer in his Report had observed one instance of cross deal executed by the Broker. The relevant observation made by the Enquiry Officer is quoted herein below:

"On March 9, 2004, the first day of his trade, the broker PNC put a sell order for

10000 shares of TCL at time 11:01:17. At identical time, he put a buy order for 10000 shares at time 11:01:17, thereby squaring up the said sell order. Thereafter he placed a buy order for 10000 shares at 11:01:54 and a sell order for 10000 shares at identical time of 11:01:54, resulting in reversal trades. He again placed a sell order for 4950 shares at 11:01:23 and squared off the same by placing a buy order for 4950 shares 11:02:24. On the said day, the net trade of the broker came to nil shares. Thus, on the said day, the broker created huge volume of 49900 shares in the scrip without any real transfer of beneficial ownership. For all the said trades the broker himself had acted as the buying and selling broker. The said pattern of trading, whether executed for the self or for any client, clearly points to some malicious design to create manipulation in the scrip. The said pattern of trading is evident on many days on which the broker had traded.”

8. 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 synchronized trades and in inflating the share price of the company. The Broker in its reply to the Enquiry Officer had stated that the main objective of its trades were to generate the brokerage. Thus, it can be concluded that the Broker contravened the provisions of Regulation 4 (2) (a), 4(2) (e) and 4(2) (o) of the PFUTP Regulations.

9. 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) and B(4)(a) of the Code of Conduct prescribed for stock brokers under Schedule II of the Stock Brokers Regulations.

10. I also note that the Investigating Authority had issued three summons to the Broker under section 11C (3) of the Securities and Exchange Board of India Act, 1992 requiring it to furnish certain information. The details of the summonses issued to the Broker were tabulated in detail in the Enquiry Report. The Broker had failed to comply with the abovementioned summons to furnish the information. I note that the Broker, in its reply to the show cause notice issued by the Enquiry officer informed that it had stopped its stock broking concern from April 2005 and no staffs were available at the time of serving of the said summons and the same was not brought to his knowledge by the peon of the office who receives the mail. The above contention of the Broker has no merit. I therefore have no hesitation in holding the Broker guilty for having contravened the provisions of Regulation 8(1) of the PFUTP Regulations and Section 11 C (3) of Securities and Exchange Board of India Act, 1992.

11. 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

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.

12. 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. This order shall come into force immediately on the 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: June 22, 2009