

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER REGULATION 28 (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008 AGAINST M/S S. JHUNJHUNWALA & CO. IN THE MATTER OF TOPLIGHT COMMERCIAL LIMITED.

1. It was brought to the notice of Securities and Exchange Board of India (hereinafter referred to as SEBI) that shares of some illiquid companies listed at Calcutta Stock Exchange Association Limited (hereinafter referred to as CSE), were traded in a circuitous route among certain members of a group operating collusively and the same were later on sold at highly inflated prices during the period January 1, 2004 to August 3, 2004 (hereinafter referred to as the investigation period). Thereafter, SEBI initiated investigations into the dealing in the shares of such companies. One such company where the dealings in shares were investigated was Toplight Commercial Limited (hereinafter referred to as the company). The investigation was conducted to find out the possible violations of 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 share price of the company was Rs.23.50/- per share on January 1, 2004, which went up to Rs.322/- on August 3, 2004, a manifold increase in just

seven months. It was 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. (hereinafter referred to as the Broker), 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. It was *inter alia* alleged that the Broker had executed large number of self trades in the shares of the company, apart from the synchronized trades during the investigation period. It was *inter alia* alleged that the trade practices of 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), 4(2)(e), 4(2)(o) and 4(2)(p) of the PFUTP Regulations, Clauses A(1) to A(5) & Clause B(4)(a) of the Code of Conduct specified in Schedule II of the Stock Brokers Regulations and SEBI circular dated September 14, 1999.

2. Thereafter, 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 (since repealed) to enquire into the alleged violations committed by the Broker. Since, the aforesaid 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 the report dated August 17, 2009 under the provisions of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 recommending the suspension of the certificate of registration of the Broker for a period of three months. The Enquiry Officer observed that the Broker violated Regulation 4(2)(a), 4(2)(e) & 4(2)(o) of the PFUTP Regulations and Clauses A(1) to A(5) & B(4)(a) of the Code of Conduct specified for stock brokers, mentioned in Schedule II of the Stock Brokers Regulations. Subsequently, a notice dated August 20, 2009 was issued by SEBI to the Broker advising it to show cause as to why the penalty as recommended by the Enquiry Officer or considered appropriate by it should not be imposed against it. The Broker was also advised to inform whether it would like to avail the opportunity of hearing. A copy of the Enquiry Report was also forwarded to the Broker along with the said notice. Since, the Broker had failed to make any submissions, another opportunity was provided to it by SEBI, vide letter dated October 14, 2009. The Broker was once again advised to inform as to whether it would like to avail the opportunity of hearing. Subsequently, the Broker, vide letter dated 'nil' (received by SEBI on October 20, 2009), *inter alia* stated that, SEBI had already suspended and debarred it from the securities market, vide order dated September 29, 2005 and the said order was vacated only by a subsequent order dated August 11, 2008. The Broker further requested to set aside the recommended penalty as it had remained debarred for a period of 35 months. Though, the Broker was advised to inform whether it would like to avail the opportunity of hearing, no response was made by it in this regard. Considering the facts and circumstances of the case, I do not consider it necessary to provide an opportunity of hearing to the Broker and therefore, proceed with the matter on the basis of the available material on record, including the aforesaid reply of the Broker.

3. 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 3, 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 CSE during the period of investigation. The Broker was found to have transacted in 2,60,190 shares of the company contributing to around 28% of the total trading volume in the said shares at CSE, as given below:

Trading Data					
No. of shares bought	% to Total Buy	No. of shares sold	% to Total Sell	Total no. of shares	% to Total Buy & Sell
99,590	21	1,60,600	35	2,60,190	28

4. The investigation conducted by SEBI observed that, out of the 2,60,190 shares traded by the Broker in the shares of the company, trading in 2,47,950 (95.29%) shares were in the nature of 'cross deals' and 'synchronized trades' as mentioned below:

Name of the stock broker	Cross and Matched transactions					
	Broker		Prakash Nahata & Co.		Subh Stock Broking Private Limited	
	Qty	%	Qty	%	Qty	%
Broker	1,98,880	76.43	2,000	0.76	47,070	18.09

The above table would indicate that 1,98,880 shares out of 2,60,190 shares which comprises 76.43% of its volume were cross deal in nature executed in its own terminal. Besides, 18.09% volume of the Broker was synchronised trades

with Subh Stock Broking Private Limited. The most pertinent factor is that majority of the volume of trades executed by the Broker through its own terminal were self trades. The details of self trades executed by the Broker are given below:

Buy for self through own terminal (shares)	Sell for self through own terminal(shares)	Total self trades (shares)	% to Total Volume of the Broker
92,290	90,140	1,82,430	70

This would clearly establish that 1,82,430 shares out of 2,60,190 shares (total trades of the Broker) which comprised of 70% volume of the Broker were its self trades. It is observed that all the self trades were executed from the same terminal of the Broker. It is a peculiar situation where the Broker itself was executing both buy and sale orders of identical volume and price in large number.

5. The above mentioned trades are not disputed by the Broker. It is pertinent to note that the Broker had executed trades from March 15, 2004 to July 27, 2004 when the share price was in the range of Rs.69/- to Rs.294.50/-. As explained above, most of the Broker's trades were self trades. The Broker also executed synchronized trades with other stock brokers. Needless to say, the execution of large number of self trades involving large number of shares created misleading appearance of trading in the market. 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. The table below would depict as to how the Broker had managed to impact the price of the shares of the company till June 18, 2004 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
15.03.2004	66.50	69.00	4000	4000	3.8
30.03.2004	69.00	72.40	6200	6200	4.9
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
23.04.2004	81.55	85.10	24000	24000	4.4
26.04.2004	85.10	89.20	8000	8000	4.8
27.04.2004	89.20	93.45	8000	8000	4.8
28.04.2004	93.45	97.90	100	50	4.8
29.04.2004	97.90	102.60	5000	5000	4.8
30.04.2004	102.60	107.50	100	50	4.8
04.05.2004	107.50	112.70	10000	10000	4.8
05.05.2004	112.75	118.10	100	50	4.7
06.05.2004	118.10	123.90	8000	8000	4.9
11.05.2004	123.90	129.00	2000	2000	4.1
12.05.2004	129.00	135.10	6000	6000	4.7
13.05.2004	135.10	141.50	14000	14000	4.7
17.05.2004	148.00	148.00	8000	8000	0.0
21.05.2004	155.40	162.50	18000	6000	4.6
24.05.2004	162.30	169.50	14100	100	4.4
26.05.2004	174.50	183.00	19000	8000	4.9
04.06.2004	202.50	208.00	23200	20000	2.7
14.06.2004	212.00	212.00	29600	26700	0.0
15.06.2004	212.00	228.00	2200	2000	7.5
16.06.2004	242.50	265.10	18600	300	9.3
17.06.2004	266.00	288.00	20000	6500	8.3
18.06.2004	287.50	294.50	39700	24660	2.4

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. Though, the details of such trades were provided to the Broker, it had chosen

not to controvert the findings of the Enquiry Officer. Most of its trades were self trades. These trades did not result in any transfer of beneficial ownership. In this connection, the observation of SAT in the matter of Triumph International Finance Ltd. Vs SEBI is very relevant and the same is reproduced as follows: *“The buyer and the seller were also the same. It is obvious that these trades were fictitious to which the appellant was a party. They were fictitious because the buyer and the seller were the same”*. In the present matter, the Broker itself was the seller and the buyer. 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.

7. 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 self trades, 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 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 manipulate the share price of the company. I hold that the Broker was responsible in executing manipulative trades in the nature of cross deals/self

trades/synchronised trades in the shares of the company. The trading pattern of the Broker had caused to depict a false picture that the shares of the company were being actively traded in the market. The Hon'ble Securities Appellate Tribunal in the matter of Ketan Parekh Vs SEBI *inter alia* observed:

"..... Any transaction executed with the intention to defeat the market mechanism whether negotiated or not would be illegal. 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."

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 (and that too self trades) indicate the level of involvement of the Broker in executing synchronized trades and in inflating the share price of the company. Thus, the violation of Regulation 4(2)(a) and 4(2)(e) of the PFUTP Regulation stands established. Thus, it can be concluded

that the Broker contravened the provisions of Regulation 4 (2) (a) and 4(2) (e) of the PFUTP Regulations.

9. It goes without saying, 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 of having contravened Clause A (1) to A (5) of the Code of Conduct prescribed for stock brokers under Schedule II of the Stock Brokers Regulations. As there is not enough material to indicate that the Broker had encouraged the clients to deal in securities solely with the object of enhancing its brokerage or commission, it is entitled to benefit of doubt in respect of the charge of violating Regulation 4(2)(o) of the PFUTP Regulations. Similarly, the Broker is entitled to benefit of doubt in respect of Clause B(4)(a) of the Code of Conduct mentioned in Schedule II of the Stock Brokers Regulation.

10. Taking into consideration all the facts and circumstances of the case and the available material on record, the present proceedings is disposed as ordered herein under. I note that the present case has been initiated under the provisions of Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002. Since, the said Regulations was repealed with effect from the notification of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008, this order is being passed under the corresponding provisions of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.

11. 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 Securities and Exchange Board of India (Intermediaries) Regulations, 2008, hereby, suspend the certificate of registration of the stock broker namely, S. Jhunjhunwala & Co.(Registration no. INB 031166110), Member, Calcutta Stock Exchange Association Limited, for a period of two months.

12. 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: November 18, 2009