

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 SUBH STOCK BROKING PRIVATE LIMITED IN THE MATTER OF TOPLIGHT COMMERCIAL LIMITED

Date of hearing: November 20, 2009

Appearance:

For Subh Stock Broking Private Limited: Mr. Pawan Kayan, Director

For Securities and Exchange Board of India : Mr. Jayanta Jash, General Manager
Mr. Vijayakrishnan G., Deputy Legal Adviser
Mr. Mrityunjaya Behera, Asst. General Manager
Mr. T. Vinay Rajneesh, Legal Officer

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 entities and the same were later on sold at highly inflated prices. In view of the above, SEBI initiated investigations into the dealing in the shares of such companies including that of Toplight Commercial Limited (hereinafter referred to as the company) to find out the possible violations 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 the 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 share price of the company had increased from Rs.23.50/- January 1,2004 to Rs.322/- on August 3,2004 (hereinafter referred to as the investigation period). The investigation conducted by SEBI revealed that certain stock brokers who had executed matched trades in the shares of the company. The investigation 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 (hereinafter referred to as the Broker) 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. The said 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. On the basis of the material collected during the investigations, 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 Regulation 4(2)(a), 4(2)(e) and 4(2)(o) 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. 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 (since repealed) to enquire into the alleged violations committed by the Broker. Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 is hereinafter referred to as the said Regulations. As, the said Regulations was since repealed by the Securities and Exchange Board of India (Intermediaries) Regulations, 2008, the Designated Authority (hereinafter

referred to as the Enquiry Officer), vide Report dated January 28, 2009 observed that the present case is not a fit case for recommending any kind of penalty in terms of the said Regulations. It was noted that the Broker had traded substantially in the shares of the company during the investigation period, which accounted for 11% of the total volume in the shares of the company at CSE. The Broker had placed continuous orders in the system (e.g. order no. 452301397 -1400, 452301409-1411, 452301414-1415, 452301426-1427, 452301447-1449, 452301452-1454 etc.) which resulted in continuous trades. The trades of the Broker were synchronised in nature, the details of which were already provided to the Broker. The investigation conducted by SEBI had *prima facie* observed that the trades of the Broker in the shares of the company during the investigation period had created misleading appearance of trading in the securities and amounted to the manipulation in the share price of the company. Therefore, being *prima facie* not satisfied with the findings of the Enquiry Officer in respect of the alleged violations committed by the Broker, a notice dated August 28, 2009 was issued to the Broker stating that the synchronised trades executed by it are allegedly in violation of Regulation 4(2)(a), 4(2)(e) and 4(2)(o) 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. The Broker was further advised to show cause as to why penalty as considered appropriate should not be imposed against it.

2. Subsequently, the Broker vide letter dated September 23, 2009 *inter alia* stated that it had traded only for 20 days in the shares of the company during the investigation period. The Broker also contended that it was not aware of the counterparty stock brokers at the time of execution of orders. According to the Broker, no new material has been brought on record by SEBI to show that the conclusions and findings arrived at by the Enquiry Officer in his report was false and not justified. While admitting the purchase of 1,02,670 shares on behalf of the clients, the Broker contended that it did not carry out any trades on its proprietary accounts and that all the trades were on behalf of its clients. The

Broker contended that its volume never exceeded 29% of the total market volume on the days of its trades and thus it is erroneous to suggest it was responsible for the increase in the share price. The Broker also stated that it had no role in artificially inflating the share price and that it had not indulged in any act which sought to or created false or misleading appearance of trading. Thereafter, an opportunity of hearing was granted to the Broker on November 20, 2009. Mr. Pawan Kayan, Director of the Broker appeared before me on behalf of it and made submissions. He submitted that the Broker had executed trades in the price range of Rs.265/- to Rs.299/- and that it had no nexus with the company or its promoters. He further submitted that, SEBI had already, vide order dated October 28, 2009 suspended the certificate of registration of the Broker for a period of three months in respect of its dealings in the shares of Radiant Financial Services Limited and the operation of the said order had already commenced with effect from November 19, 2009. He also submitted that no appeal has been preferred against the aforesaid order. In view of the aforesaid order, he requested not to impose any separate penalty on the Broker.

3. I have considered the Enquiry Report, the show cause notice dated August 28, 2009 issued to the Broker, its reply dated September 23, 2009, the submissions made on behalf of the Broker during the hearing and other material available on record. It is not in dispute that the share price of the company had increased from Rs.23.50/- on January 1, 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 the stock brokers, namely, S. Jhunjhunwala & Co., Prakash Nahata & Co., N.M. Lohia 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 1,02,670 shares of the company contributing to around 11% of the total trading volume in the said shares at CSE, during the said period, as 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
1,02,670	22	0	0	1,02,670	11

4. It was observed that the said trades were executed through synchronized deals. The details of which are given below:

Name of the stock broker	Synchronized transactions			
	S. Jhunjhunwala & Co.		Prakash Nahata & Co.	
	Qty	%	Qty	%
Broker	47070	45.84	55600	54.15

5. The continuous execution of trades in the shares of the company as alleged against the Broker is not in dispute. The investigation conducted by SEBI found that the Broker had placed orders in the system (e.g. order no. 452301397-1400, 452301409-1411, 452301414-1415, 452301426-1427, 452301447-1449, 452301452-1454 etc.) which resulted in continuous trades. This is also not disputed by the Broker. It was found that the said trades were instrumental in increasing the share price from Rs.265/- to Rs.298/- within a short period i.e. during the period June 16, 2004 to June 21, 2004. Details of such increase are given below:

Date	Previous day Closing price(Rs)	Opening Price (Rs)	Exchange volume (number of shares)	Volume created by the Broker (number of shares)	% Increase in share price
16.06.2004	242.50	265.10	18600	300	9.3
17.06.2004	266	287.50	20000	3500	8.1
18.06.2004	287.50	295.00	39700	3300	2.6
21.06.2004	294.90	298.00	26800	7820	1.1

6. Thus, it is established that the Broker had traded substantially in the shares of the company during the period of investigation. What is more serious is that all its trades were in the nature of synchronised trades. The synchronised transactions of the Broker in the shares of the company were generally continuous. The Broker executed such trades from June 16, 2004 till July 27, 2004. It goes without saying that the Broker was able to gradually increase the price of the shares of the company by placing orders (in a synchronised manner) 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 manipulating the share price of the company during the investigation period. The pertinent factor to be noted is that the trades of the Broker were in the nature of synchronised deals. The number of synchronised trades executed by the Broker was not insignificant. The Broker had executed number of such trades and that too almost continuously for a period of time. In this case, the involvement of the Broker in the price movement is very much evident. It cannot take the plea that it was not aware of the intention of its clients. Continuous execution of synchronised trades by the Broker in the manner as mentioned above in an illiquid scrip would by itself indicate the manipulative intent behind such trades. Large number of continuous synchronised trades as was observed in the present case cannot be executed unless there was unity of minds among the Broker and the clients involved in such transactions. The complicity of the Broker with regard to the synchronised trades is evident from its trading pattern. 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. 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. Hence, one can, without any doubt hold that these trades executed by the Broker were intended to manipulate the price of the shares of the company. Needless to say, the trades of the Broker created a misleading appearance of trading in the securities. Further, placing orders with

a price higher than the previous day's 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 all the trades of the Broker were synchronised deals indicates the level of involvement of the Broker in inflating the share price of the company. In the facts and circumstances, I have to conclude that these trades were 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 submission that it had not intended to manipulate the share price. Thus, it can be concluded that the Broker contravened the provisions of Regulation 4 (2)(a) and 4(2)(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."

7. 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 synchronised 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 Clauses 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. Taking into consideration all the facts and circumstances of the case and the available material on record, I disagree with the findings and recommendation of the Enquiry Officer and find that the Broker violated the provisions of Regulation 4(2) (a) and 4(2) (e) of the PFUTP Regulations and Clauses A (1) to A (5) of the Code of Conduct prescribed for stock brokers under Schedule II of the Stock Brokers Regulations. As the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 is 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.

8. 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. Subh Stock Broking Private Limited [Registration No. INB 030707437], Member, The Calcutta Stock Exchange Association Limited, for a period of one month.

9. As the operation of the order of Securities and Exchange Board of India dated October 28, 2009 suspending the certificate of registration of the aforesaid stock broker for a period of three months, commenced with effect from November 19, 2009, the penalty ordered under this order shall run concurrently from the date of this order.

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

Place: Mumbai

Date: November 27, 2009