

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**ORDER**

**UNDER REGULATION 28 (2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008 AGAINST M/S PRAKASH NAHATA & CO., IN RESPECT OF ITS DEALINGS IN THE SHARES OF OFFSHORE FINVEST LIMITED**

1. It was brought to the notice of the Securities and Exchange Board of India (hereinafter referred to as SEBI) that shares of some illiquid companies listed at the Calcutta Stock Exchange 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 between January 1, 2004 and February 25, 2005 (hereinafter referred to as the investigation period). In view of the same, SEBI initiated investigation into the dealings in the shares of such companies which included Offshore Finvest Limited (hereinafter referred to as the company). The investigation conducted by SEBI *inter alia* observed that the share price of the company had witnessed a sharp rise between January 1, 2004 and February 25, 2005. The average price of the shares of the company was Rs.43/- on January 14, 2004 which went up to Rs.160/- on February 8, 2005. It was noticed that the stock brokers viz. Mr Rajendra Prasad Shah, M/s Prakash Nahata & Co. (hereinafter referred to as the Broker) and Ahilya Commercial Private Limited had traded substantially in the shares of the company and their cumulative trades accounted for 70% of the total volumes traded in the said shares at CSE during the investigation period. It was alleged that the transactions of the Broker were *inter alia* designed to manipulate the shares of the company and thereby *prima*

*facie* contravening Regulations 4(2)(a), 4(2)(e) and 4(2)(o) of 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 Clauses A(1) to A(4) and B(4)(a) of the Code of Conduct specified for stock brokers under Schedule II of the Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992 (hereinafter referred to as the Broker Regulations). It was also alleged that the Broker had failed to co-operate with the investigating authority and therefore liable for an action, in terms of Regulation 27(ix) of the Broker Regulations. Thereafter, SEBI, vide order dated March 18, 2008 read with a subsequent order dated December 2008 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 aforesaid alleged violations committed by the Broker. The Enquiry Officer/Designated Authority (hereinafter referred to as the Enquiry Officer) submitted the Report dated November 27, 2009 recommending the suspension of certificate of registration of the Broker for a period of three months. Pursuant to the submission of the Enquiry Report, SEBI issued a notice dated December 9, 2009, to the Broker advising it to show cause as to why the penalty as recommended by the Enquiry Officer or as considered appropriate by SEBI should not be imposed against it. A copy of the Enquiry Report was also forwarded to the Broker with the said show cause notice. The Broker was also advised to inform SEBI, whether he required an opportunity of hearing in the matter. Though, the said show cause notice was acknowledged by the Broker on December 9, 2009, no reply was received by SEBI. Therefore, a reminder was sent to the Broker by SEBI on March 5, 2010. Thereafter, the Broker, vide letter dated March 18, 2010 *inter alia* stated that it had not executed any trades in its personal name and that the trades were executed in the name of its clients in the ordinary course of business. The Broker further

stated that it had registered all its clients before trading on their behalf. In view of the above submissions, the Broker requested not to take any action against it. Though, the Broker was advised to indicate whether it required any personal hearing, no response in that regard was received by SEBI. In view of the above, I do not consider it necessary to provide an opportunity of hearing to the Broker and the present proceedings is being considered on the basis of the available material on record including the submissions made by the Broker, vide letter dated March 18, 2010.

2. The increase in the share price of the company during the investigation period remains undisputed before me. The total traded volume in the shares of the company during the investigation period at CSE was 1,04,38,020 shares. Out of the same, the trades of the Broker was in respect for 14,80,201 shares, which constituted 14.18% of the total volume as given below:

| No. of shares bought | % to Total Buy | No. of shares sold | % to Total Sell | Total no. of shares | % to Total Buy & Sell |
|----------------------|----------------|--------------------|-----------------|---------------------|-----------------------|
| 7,54,200             | 14.50%         | 7,26,001           | 13.90%          | 14,80,201           | 14.18%                |

The Broker had also entered into cross deals and synchronised/matched transactions while trading in the shares of the company, the details of which are given below:

|        | Cross and Matched transactions |       |                                   |      |
|--------|--------------------------------|-------|-----------------------------------|------|
|        | Broker                         |       | Ahilya Commercial Private Limited |      |
|        | Qty                            | %     | Qty                               | %    |
| Broker | 13,49,000                      | 91.14 | 86,500                            | 5.84 |

3. The details of the trades executed by the Broker in the shares of the company during the period of investigation were provided to it. The extracts of the investigation report and the relevant trade and order logs in respect of the trades of the Broker were also provided to it by the Enquiry Officer, along with

the show cause notice dated May 14, 2008. The Broker had traded substantially in the shares of the company during the investigation period. Most of the trades of the Broker were in the nature of cross deals. The pertinent factor was that 83% of Broker's cross deals were executed in its own account from February 4, 2004 to September 23, 2004, as given below:

| <b>Volume of self trades through own terminal</b> | <b>% to Total Volume of the Broker</b> | <b>Buy through self trade</b> | <b>Sell through self trade</b> |
|---------------------------------------------------|----------------------------------------|-------------------------------|--------------------------------|
| 12,25,100                                         | 82.76                                  | 6,13,100                      | 6,12,000                       |

4. Thus, 12,25,100 shares out of 14,80,201 shares which comprised of 83% volume of the Broker were self trades executed from the same terminal. The details of date wise self trades of the Broker were given in the Enquiry Report. The share price of the company had also increased from Rs. 91/- to Rs. 142/- during such trades. In the self trades, the Broker was found to be acting as both buyer and seller. It is not in dispute that majority of trades of the Broker were cross deals. The fact that the share price of the company had increased from Rs.75/- to Rs.181/- during the period of trades of the Broker, was also not disputed. Thus, it is obvious that the trades of the Broker on both sides (buy and sell) contributed to the artificial price rise in the shares of the company. Undoubtedly, this could not have happened unless the Broker had placed orders at rates higher than the then prevailing rates. Further, by entering into trades on both sides, the Broker had executed fictitious trades. As stated earlier, the Broker executed cross deals, majority of which were self trades, consistently and continuously between February 4, 2004 and September 23, 2004. The trades of the Broker were substantial as compared to the total traded volume in the shares of the company during the period. The Broker's trades had accounted for a major portion of the volume traded at CSE, on various days. Such details were also given in the Enquiry Report. As the Broker had not specifically controverted such transaction details, I do not consider it necessary

to reproduce the same in this Order. Needless to say, the trades of the Broker created misleading appearance of trading in the securities market. Though, the Broker contended that the trades were executed in the name of its clients, the same was not supported by sufficient evidence. On the other hand, the available records indicate that the Broker had entered into self trades which accounted for a major portion of its total traded volume. The Enquiry Officer had observed that the conduct of the Broker was not in accordance with the SEBI Circulars dated July 27, 2000 (in respect of margin) and July 18, 2001 (in respect of the use of Unique Client Code). The Broker had failed to controvert the findings of the Enquiry Officer. The contention of the Broker that all its trades were delivery based is without any merit. In this regard, I note the finding of the Enquiry Officer that the details submitted by the Broker did not reflect the corresponding entries to the respective clients and was inconclusive to prove that all the trades of the Broker in the shares of the company during the period of investigation period were delivery based transaction for its clients. This was also not controverted by the Broker. Considering the totality of the facts and circumstances of the case and the nature of the trades executed by the Broker, it is obvious that the object of the Broker was to manipulate the price and order matching mechanism. Therefore, I do not have any hesitation to hold that the Broker had contravened Regulation 4(2)(a) and 4(2)(e) of the PFUTP Regulations. As there is no sufficient evidence to establish that the Broker had executed trades solely with the object of enhancing his Brokerage or commission, it is entitled for a benefit of doubt in respect of charge of violation of Regulation 4(2)(o) of the PFUTP Regulations. Besides, the aforesaid violations, it is pertinent to note that the Broker had failed to co-operate with the Investigating Authority. This act of the Broker made it liable for action under the erstwhile Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, in terms of Regulation 27 (ix) of the Broker Regulations. The allegation was that the

Broker had failed to comply with various summons of SEBI dated March 16, 2006, November 23, 2006 and December 4, 2006. I note that, vide summons dated March 16, 2006, the Broker was required to submit certain details, as mentioned therein, by March 25, 2006. Though, the said summons was acknowledged by the Broker, it had not filed the details, as sought by SEBI. In view of its failure to submit the details, the Broker was again advised to submit the details by April 25, 2006, vide summons dated April 10, 2006. The said summons was also acknowledged by the Broker. Thereafter, vide summons dated November 23, 2006, the Broker was advised to appear before the investigating authority on November 30, 2006. The Broker had failed to appear on the said date. Subsequently, vide letter dated November 30, 2006 the Broker requested SEBI to provide 15-20 days to prepare the details. However, SEBI did not receive any details from the Broker. In respect of the said allegation, it was observed in the Enquiry Report “ ..... *the noticee admitted that it was a mistake on their part to not honour the summonses issued by SEBI*”. No person should be allowed to hinder the investigation by not complying with the summons issued by SEBI. Those who are operating in the securities market are expected to provide necessary information whenever required by SEBI. Such failure especially on the part of an intermediary functioning in the securities market cannot be held to be trivial and SEBI would have to take such instances very seriously.

5. By indulging in manipulative transactions, as stated earlier, 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 entering into ‘self trades’ as stated above in this order, the Broker had indulged in deceptive trade practices. By doing so, the Broker had contravened the relevant provisions of law. The above findings would also lead to the conclusion that the Broker had failed to comply with his duties as a stock broker as specified under the provisions of the Broker Regulations. In terms of the

provisions of the Broker Regulations (Clauses A(1) to (4) of the Code of Conduct), a stock broker shall not *inter alia* create false market or indulge in any act detrimental to the investors' interest or which leads to the interference with the fair and smooth functioning of the securities market. Further, it is the duty of the stock broker to maintain high standards of integrity, promptitude and fairness and shall act with due skill, care and diligence in the conduct of his business. He shall not *inter alia* indulge in manipulative transactions with a view to distort the market equilibrium. As established above, the trades of the Broker in the shares of the company *inter alia* created misleading appearance of trading in the securities market and thereby violated the provisions of PFUTP Regulations. The Broker had thus failed to comply with his duties as expected of a SEBI Registered intermediary and instead became a party to the manipulation in the shares of the company to the detriment of the genuine investors. Thus, the contravention of Clauses A (1) to (4) of the Code of Conduct in schedule II of the Broker Regulations stands established. An intermediary who fails to perform such duties deserves to be penalised in accordance with law. As there is no sufficient evidence to establish that the Broker had encouraged the sales or purchases of securities with the sole object of generating brokerage or commission, it is entitled for a benefit of doubt in respect of charge of violation of clause B(4)(a) of the Code of Conduct specified in Schedule II of the Broker Regulations. .

6. In the facts and circumstances of the case, I do not see any reason to disagree with the recommendation of the Enquiry Officer and therefore, the present enquiry proceeding initiated against the Broker in the matter of Offshore Finvest Limited is disposed of, as ordered herein below, under the provisions of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.

7. 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 Prakash Nahata & Co. [Registration No. INB 030062815], Member, The Calcutta Stock Exchange Limited, for a period of three months.

8. This order shall come into force immediately on 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: APRIL 21, 2010**