

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER REGULATION 28 (2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008 AGAINST MR. RAJENDRA PRASAD SHAH, IN RESPECT OF HIS 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 share price 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 (hereinafter referred to as the Broker), M/s Prakash Nahata & Co. 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 trades 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 10, 2008 appointed an Enquiry Officer under the provisions of 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 for the suspension of the certificate of registration of the Broker for a period of two months and fifteen days.

2. 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 desired to avail an opportunity of hearing. The Broker, vide letter dated December 30, 2009 stated *"This is to inform you that I do accept the same imposition of suspension on me with the humble request to your honour to reduce the same to One month and to adjust with my said suspension of the period in my suspension of September 2005, as from the day of suspension till date I have not any business"*. Though, the Broker was advised to indicate whether it sought for a personal hearing, no response in that regard was made by it. In view of the above, I do not consider it necessary to provide an opportunity of hearing to the Broker and the present proceeding is being considered on the basis of the available material on record

including the submissions made by the Broker vide letter dated December 30, 2009. As the Broker had not disputed the findings of the Enquiry Officer in respect of the violations committed by it, I do not consider it necessary to examine violations committed by him in detail.

3. According to the Enquiry Officer, the Broker was guilty of contravening Regulations 4(2)(a), 4(2)(e) and 4(2)(o) of 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 Broker Regulations. It was also observed by the Enquiry Officer that the Broker had failed to co-operate with the investigating authority of SEBI, as required under Regulation 27(ix) of the Broker Regulations. As stated earlier, the findings of the Enquiry Officer remain undisputed before me. The trades of the Broker accounted for 44.42% (46,36,726 shares) of the total volume in the shares of the company during the investigation period. Out of the total trades of the Broker, 99.30% (46,04,220 shares) were cross deals. The extracts of the investigation report and the relevant trade and order log in respect of the trades of the Broker were provided to him by the Enquiry Officer, vide show cause notice dated May 14, 2008. The Broker has traded substantially in the shares of the company during the investigation period. The trades of the Broker were responsible for 100% of the total traded volume at CSE, on some of the days. The trades of the Broker resulted in the share price increase from Rs. 97.70/- to Rs. 195.30/- during the period between April 21, 2004 and February 25, 2005. The details of such trades and the resultant price increase were discussed in detail in the Enquiry Report. As stated earlier in this order, most of the trades of the Broker were in nature of cross deals. The pertinent factor was that 44% of the cross deals (starting from April 21, 2004 to October 15, 2004) were executed in his own account. He was found to be acting as both buyer and seller in those trades. The details of such trades were also given in the Enquiry Report. Needless to say, the trades of the Broker on both sides (buy and sell) had caused the price increase. The said price increase was caused as the Broker was placing the orders at rates higher than the then prevailing rates. Further, by entering

into trades on both sides, the Broker had executed fictitious trades. I note that the Broker had contended before the Enquiry Officer that it had used its own codes instead of clients' code while trading in order to avoid margin payments to the stock exchange. In this regard, 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). It was also observed by the Enquiry Officer that all the trades of the Broker were not delivery based. In the facts and circumstances of the case, 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, he 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. The Enquiry Officer had given detailed findings in respect of the said allegation and observed that the Broker had failed to comply with the summons issued by SEBI. The same has not been controverted by the Broker. 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. 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 violation of Clauses A(1) to (4) of the Code of Conduct in Schedule II of the Broker Regulations stands established. 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.

4. The only request of the Broker was to reduce the recommended penalty to one month and to adjust the same with the period of prohibition undergone by it, vide SEBI order dated September 29, 2005. The said plea of the Broker is without any merit. As mentioned above in this order, the trades of the Broker were in contravention of the PFUTP Regulations and the Broker Regulations. The involvement of the Broker in creating misleading appearance of trading and thereby increasing the share price of the company cannot be viewed leniently. Besides, one of the findings of the Enquiry Officer was that the Broker failed to comply with the summons of SEBI. This is, indeed a very serious violation. 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 supposed 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 view such instances very seriously. In view of the facts and circumstances of the case, I am not inclined to reduce the recommended penalty. Further, the prohibition imposed in terms of the Order dated September 29, 2005 was not in respect of the present matter. The said order was passed *inter alia* in respect of the trades of the Broker in the matter of Bankam Investments Limited. In view of the above, the plea of the Broker to adjust the recommended penalty with the prohibition already imposed on it, is without any merit and therefore deserves to be rejected. In the facts and circumstances of the case, I dispose of the present enquiry proceeding initiated against the Broker in the matter of Offshore Finvest Limited, as ordered herein below, under the provisions of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.

5. 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, Mr. Rajendra Prasad Shah [Registration No. INB 030054010], Member, The Calcutta Stock Exchange Limited, for a period of two months and fifteen days.

6. 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 20, 2010