

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 BASANT PERIWAL & CO., IN RESPECT OF ITS DEALINGS IN THE SHARES OF BAKRA PRATISTHAN LIMITED.

1. In view of the unusual price movement noticed in the shares of some illiquid companies including that of Bakra Pratisthan Limited (hereinafter referred to as the company) listed at the Calcutta Stock Exchange Limited (hereinafter referred to as CSE) during the period between January 2004 and March 2005 (hereinafter referred to as the investigation period), Securities and Exchange Board of India (hereinafter referred to as SEBI) initiated investigation into the dealings in the shares of such companies. The investigation conducted by SEBI *inter alia* observed that the share price of the company had witnessed a rise from Rs.18.50/- on between January 15, 2004 to Rs.380/- on March 15, 2005. It was noticed that certain stock brokers including M/s Basant Periwai & Co. (hereinafter referred to as the Broker) had traded substantially in the shares of the company and their cumulative trades accounted for 85% 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* in contravention of 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). Thereafter, SEBI, vide order dated February 18, 2007 read with subsequent orders dated November 19, 2007 and November 18, 2009 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Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (since repealed) and Securities and Exchange Board of India (Intermediaries) Regulations, 2008 (hereinafter referred to as the Intermediaries Regulations) to enquire into the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 April 29, 2010 recommending for the suspension of the certificate of registration of the Broker for a period of one month. Pursuant to the submission of the Enquiry Report, SEBI issued a notice dated May 4, 2010, 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 May 10, 2010 stated *".....we have no further explanation to offer in the matter except we have already produced before the Enquiry officer"*. 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 proceedings is being considered on the basis of the material available on record including the letter dated May 10, 2010 from the Broker,.

2. 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. As stated earlier, the findings of the Enquiry Officer remain undisputed before me. The trades of the Broker accounted for 52.10% (18,42,152 shares) of the total volume in the shares of the company during the investigation period. The share price of the company had increased from Rs. 18.50/- to Rs. 380/-. The Broker had executed both buy and sell trades involving 10,63,712 shares of the company from its own terminal at the same price and quantity within a gap of few seconds. The Broker was involved in such transactions for a period of fifteen months during the investigation period. Some of such instances of cross deals were also mentioned in the Enquiry Report. The extracts of the investigation report and the relevant trade and order log in respect of the trades of the Broker were provided to it by the Enquiry Officer along with the show cause notice dated May 28, 2008. The trades of the Broker were responsible for 100% of the total traded volume at CSE on some of the days. The details of such trades and the resultant price increase were discussed in detail in the Enquiry Report. The Enquiry Officer had discussed the said trades elaborately and found that the same were in violations of the provisions of the PFUTP Regulations, as stated above. Though, the copy of the Enquiry Report was provided to the Broker, the same were not controverted by it. As stated earlier in this order, most of the trades of the Broker were in the nature of cross deals. The Broker was found to have acted as both buyer and seller in those trades. Needless to say, the trades of the Broker on both sides (buy and sell) had caused the artificial price increase. It was observed that when the Broker was trading, the share price had increased by an average of 12% to 13% on daily basis. In this process, the Broker had increased the share price from Rs. 18.50/- to Rs. 80/-. The same was also dealt in the Enquiry Report. Pertinently, the Broker was the sole stock broker involved in the trading in the shares of the company during the said period. The investigation conducted by SEBI also observed that the price increase was not supported by any fundamentals of the company. It was noted that for the years ended March 31,

2005, March 31, 2004 and March 31, 2003, the company had incurred loss (before tax) of Rs.0.51 lakh, Rs.0.66 lakh and Rs.0.17 lakh, respectively and that as on March 31, 2005, it had a negative Earning Per Share (EPS) of 0.05. In such a financial background, the share price of the company could not have increased but for the manipulation as happened in the present case where the Broker was a necessary party. The very fact that the Broker had traded substantially in the shares of the company which was otherwise illiquid would establish that it had indulged in an act which had created false and misleading appearance of trading in the securities. Further, by such process, the Broker had manipulated the share price of the company during the relevant period. A cumulative analysis of the facts of the case, clearly indicate that the Broker did not act in a bonafide manner. On the contrary, it highlights the complete involvement of the Broker in the creation of misleading market in the shares of the company and in the manipulation in its share price.

3. Further, I note that the Enquiry Officer had observed ‘.....the Noticee purchased from the exchange in one client code and subsequently sold to different clients at their back office as off the floor transactions. Similarly, the reverse was done in case of sale. There is no record of these subsequent transactions with CSE as the Noticee had not disclosed the change of the client codes to the CSE. The Noticee had adopted this unique modus operandi for avoiding the margin requirements of the exchange by executing transactions in the nature of off the floor transactions’. Some of such transactions were also mentioned in the Enquiry Report. From 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. Further, it has to be inferred that the Broker had encouraged the clients to deal in the securities solely with the object of enhancing his brokerage. The only conclusion that can be arrived at is that the acts of the Broker were in total contravention of Regulations 4(2)(a), 4(2)(e) and

4(2)(o) of the PFUTP Regulations. No explanation was provided by the Broker to take a contrary view in this regard.

4. In terms of the provisions of the Clauses A(1) to (4) of the Code of Conduct prescribed under the provisions of the Broker Regulations, 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. The stock broker shall also maintain high standards of integrity, promptitude and fairness and shall act with due skill, care and diligence in the conduct of his business. It is also a requirement that a stock broker shall not *inter alia* indulge in manipulative transactions with a view to distort the market equilibrium. In the present case, the trades of the Broker (as explained in detail above) created a misleading appearance of trading in the shares of the company. It also manipulated the share price of the company by vitiating the price discovery mechanism in the securities market. It sufficiently demonstrates that the Broker, instead of maintaining the Code of Conduct, became a party to the manipulation, to the detriment of genuine investors. A stock broker is expected to protect the interest of the investors in the securities market and that he is required to maintain high standards of integrity, promptitude and fairness in the conduct of the business dealings. By indulging in manipulative transactions, as stated earlier, the Broker did not uphold the expected standards of integrity and fairness in its conduct. Further, it has to be inferred that that the Broker had encouraged sales/purchases of the securities with the sole object of generating brokerage/commission. Thus, the violation of Clauses A(1) to (4) and B(4)(a) of the Code of Conduct in Schedule II of the Broker Regulations stands established. The involvement of the Broker in the manipulation of the shares of the company cannot be viewed leniently. An intermediary who fails to perform such duties has to be punished in accordance with law. In the facts and

circumstances of the case, I dispose of the present enquiry proceeding initiated against the Broker in the matter of Bakra Pratisthan Limited, as ordered herein below.

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, M/s Basant Periwal & Co. [Registration No. INB 030050513], Member, The Calcutta Stock Exchange Limited, for a period of one month.

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: JUNE 15, 2010**