

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 M/S RAJENDRA PRASAD SHAH IN RESPECT OF ITS DEALINGS IN THE SHARES OF BAKRA PRATISTHAN LIMITED

Date of hearing: January 21, 2011

Appearance:

For M/s Rajendra Prasad Shah:

Mr. Rajendra Prasad Shah

For the Securities and Exchange Board of India: Mr. Jayanta Jash, General Manager

Mr. Mrityunjaya Behera, Asst. General Manager

Mr. T. Vinay Rajneesh, Asst. Legal Adviser

Ms. Chhavi Sinha, Asst. Legal Adviser

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 investigations into the dealings in the shares of such companies. The investigation conducted by SEBI in respect of the Company *inter alia* observed that its share price had increased from ₹18.50/- (on January 15, 2004) to ₹380/- (on March 15, 2005). It was noticed that certain stock brokers including, M/s. Rajendra Prasad Shah (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 in the said shares at

CSE during the investigation period. It was alleged that the trades of the Broker were in contravention of Regulation 4(2) (a), (e) and (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 the 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 violations allegedly committed by the Broker. The Designated Authority (hereinafter referred to as the Enquiry Officer) submitted the `Report dated May 4, 2010, recommending the suspension of the certificate of registration of the Broker for a period of fifteen days. Thereafter, a notice dated May 12, 2010 was issued by SEBI to the Broker, requiring 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 sent along with the said show cause notice. The Broker was also advised to inform SEBI, whether it desired to avail an opportunity of hearing. Though, the said show cause notice was duly acknowledged, the Broker failed to submit any reply. As the Broker failed to respond to the show cause notice, a reminder dated July 16, 2010 was issued by SEBI to the Broker. However, no response was received from the Broker. Subsequently, the Broker was given an opportunity of hearing on January 21, 2011 wherein, its proprietor, Mr. Rajendra Prasad Shah appeared and made submissions. He *inter alia* contented that the trades of the Broker were not with the intention of price rigging but only on the instructions of its clients. Mr. Rajendra

also filed a written submission on behalf of the Broker during the course of the hearing.

2. I have considered the Enquiry Report, the oral and written submissions made on behalf of the Broker and other material available on record. According to the Enquiry Officer, the Broker was guilty of contravening Regulations 4(2)(a), (e) and (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. I note that the trades of the Broker accounted for 3.15% (1,11,340 shares) of the total volume of the shares of the Company at CSE. Out of the total of 1,11,340 shares traded by the Broker, 1,08,240 shares representing 97.21% were through cross deals. The details of such trades were mentioned in the Enquiry Report. The Broker was involved in cross deals for nine months. The share price had increased during such period and the same was also mentioned in the Enquiry Report. I note that the said increase was not supported by any fundamentals of the Company. For the years ended March 31, 2005, March 31, 2004 and March 31, 2003, the Company had incurred loss (before tax) of ₹0.51 lakh, ₹0.66 lakh and ₹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 had happened in the present case where the Broker was a necessary party. As observed above, most of the trades of the Broker were executed through cross deals. The Enquiry Officer had examined the said trades and found that the same were in violation of the provisions of the PFUTP Regulations. According to the Broker, its trades were in compliance with the guidelines of SEBI. It is pertinent to note that the Broker was found to have acted as both buyer and seller in respect of the orders placed by it. Needless to say, the Broker himself was executing trades on both sides. Thus, the Broker was found to have been on all four sides of the transactions - as a buyer, buying broker, seller, selling broker. During the course of

its trades, the share price had increased as shown in Enquiry Report. Admittedly, the Broker had traded during the following period:-

- i. between February 11, 2004 and February 17, 2004
- ii. between May 12, 2004 and July 9, 2004
- iii. between November 24, 2004 and March 3, 2005

It is the contention that the Broker was not involved in the price increase from ₹110/- to ₹370/- as observed by the Enquiry Officer and that its trades were in the range of ₹110/- to ₹110.50 (February 11, 2004-February 17, 2004), ₹343/- to ₹345.90 (May 12, 2004 to June 3, 2004), ₹343.30 to ₹359.60 (June 21, 2004 to January 14, 2005). It was submitted that on May 3, 2005, the Broker had entered into a transaction for a purchase and sale involving 2000 shares (each) at ₹378/-. Though, the Broker had traded only during the aforesaid period, the manner of execution of its trades as discussed above where it was involved in all the four capacities in the transaction cannot be said to be bonafide. A cumulative analysis of the facts of the case, establishes the involvement of the Broker in creating misleading appearance of trading in the shares of the Company and in the price manipulation. The Broker, therefore, cannot absolve himself as his trades were instrumental in creation of volumes and prices. If the intention of the Broker was bonafide, what was the need for execution of those transactions through cross deals, wherein, the Broker was acting as the party on both the sides of the transaction as buying and selling broker and also the buying and selling clients? Further, the Enquiry Officer had also observed the following:

“The Noticee contended that these transactions were executed on behalf of the clients. He has further stated that ‘some transactions were done in “self” to save margin as it takes 3 days time for clearing the margin collected from the client and make payment to the Exchange immediately’. From the own admission of the Noticee it can be seen that he adopted the above modus operandi to avoid margin. Further SEBI vide circular SMDRP/POLICY/CIR-35/98 dated December 11, 1998 made it mandatory for the brokers to collect upfront margin from the clients and exchange shall collect margin from the brokers on T+1 basis as stated in circular No. SMD/POLICY/CIR-9/2003 dated March 11, 2003. Thus the claim of the Noticee does not have any basis. Besides, SEBI has issued a circular No. SMD/POLICY/CIR-03 dated February 6, 2003 which does not allow brokers making changes in client codes repeatedly in the back office.”

3. The fact that the Broker traded substantially in the shares of the Company, which was otherwise illiquid, establishes that it had indulged in an act which had created false and misleading appearance of trading in the securities. In this regard, I note that the trades of the Broker were executed in its self-account, details of which are already given in the Enquiry Report. There was no change in beneficial ownership in respect of such trades. Thus, in the facts and circumstances of the case, the matched trades executed by the Broker in its own account would on the face of it establish that such trades were fictitious. The Broker himself was the buying and the selling stock broker, wherein, it acted as the buying as well as selling client. It was observed that the Broker pursuant to the purchase of shares from the stock exchange in 'self' account subsequently was sold to different clients by way of 'off market transactions'. Some of such transactions were listed in the Enquiry Report. The Broker had not disclosed the change of client code to CSE. 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. Though, the Broker had contended that it had not encouraged the sale and purchase in the shares of the Company, the facts of the case establish the contrary. The only conclusion that can be arrived at is that the acts of the Broker were in contravention of Regulations 4(2)(a), (e) and (o) of the PFUTP Regulations. In terms of the provisions of Clauses A(1) to (4) of the Code of Conduct prescribed under 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. 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 establishes that the Broker was a party to the manipulation. Further, it has to be inferred that the Broker had

encouraged sales/purchases in the shares of the Company 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. I also note that the Broker had committed similar violations in a different scrip more or less during the same period and for the said violations, its certificate of registration was suspended by SEBI for a period of two months and fifteen days, vide an Order dated April 20, 2010. Considering the case in its totality and the penalty imposed against the other stock brokers involved in the matter, in the interest of justice, I am disposing of the proceedings as ordered herein below.

4. 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. Rajendra Prasad Shah [Registration No. INB 030054010], Member, The Calcutta Stock Exchange Limited, for a period of five days.

5. This Order shall come into force immediately on expiry of twenty one days from the date of the Order.

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

PLACE: MUMBAI
DATE: MARCH 8, 2011