

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: RAJEEV KUMAR AGARWAL, WHOLE TIME MEMBER**

ORDER

**UNDER REGULATION 28(2) READ WITH REGULATION 38(2) OF THE
SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES)
REGULATIONS, 2008**

**In respect of Mr. Ashok Kumar Kayan, Broker, CSE (SEBI REGD. NO. INB030491111) in
the matter of Bakra Prathisthan Ltd.**

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1. The Securities and Exchange Board of India ('SEBI') had conducted investigation into the irregular trading for the period January 1, 2004 to March 31, 2005 ('investigation period') in the scrip of Bakra Prathisthan Limited ('the Company') listed at the Calcutta Stock Exchange Limited ('CSE').
 2. Investigations revealed that the share prices of the company had witnessed a phenomenal rise from ₹18.50/- to ₹380/- during the investigation period without any change in the economic fundamentals of the company. Four stock brokers viz: Basant Periwal & Co, Ahilya Commercial Pvt. Ltd., Rajendra Prasad Shah and Mr. Ashok Kumar Kayan ('noticee') had traded substantially in the shares of the Company and their cumulative trades accounted for 85% of the total volumes traded in the said scrip at CSE during the investigation period.
 3. It was alleged that the entire 5,35,450 shares of the Company traded (both buy and sell) by the noticee, were cross deals wherein he was both buying broker as well as the selling broker. The trades were client to client trades created on a single terminal. Both buy and sell orders were done either in identical time or within a gap of few seconds. The clients were allowed to place buy and sell orders of same quantity at the same price, simultaneously, which led to the creation of artificial volume resulting in the price rise of the scrip during the investigation period.
 4. In view of the above, it was alleged that the noticee had created artificial volume and influenced the price of the scrip and thereby violated regulations 4(2)(a),e) and (o) of the SEBI (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 read with Schedule II of the SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 (hereinafter referred to as the 'Stock Brokers Regulations').

5. Based on the above investigations vide order dated February 18, 2007, read with subsequent orders dated November 19, 2007 and November 18, 2009, SEBI appointed an Enquiry Officer/Designated Authority ('DA'), under the provisions of SEBI(Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (*since repealed*) read with SEBI(Intermediaries) Regulations, 2008 (hereinafter referred to as 'the Intermediaries Regulations'), to enquire into the aforesaid alleged violations by the noticee.
6. After conducting the proceedings, the DA submitted a Report dated May 19, 2011 ('the Report') in terms of regulation 27 and 38(2) of the Intermediaries Regulations. In the Report, the DA found that perfect synchronization of price; time and quantity were not observed on any day. There was difference of time of the order placed and the quantity of the orders. The DA did not find any manipulative role of the noticee in those trades as no corroborative material was available to establish allegation of manipulation. Based on these findings, the DA has found that the allegation of regulations 4(2) (a), e) and (o) of the PFUTP Regulations 2003 was not established. The DA further observed that the noticee individually traded for 10.15% of the total market volume in the scrip and executed cross deals continuously for 11 days for 1,81,850 shares which accounted for 50.85% of the noticee's traded volume in the scrip of the Company. The noticee was expected to be diligent and use required skill and care while acting as a broker, in which the noticee had failed and thereby violated the provisions of regulation 7 read with A (2) of Code of Conduct specified for stock brokers read with Schedule II of the Stock Brokers Regulations. Based on these findings, the DA recommended that the noticee may be warned under regulation 27(vi) of the Intermediaries Regulations.
7. After considering the Report, a show cause notice ('SCN') dated June 10, 2011 was issued to the noticee under regulation 28(1) and 38(2) of the Intermediaries Regulations calling upon him to show cause as to why the penalty recommended by the DA or considered appropriate by the Board should not be imposed on him. A copy of the Report was also forwarded to the noticee alongwith the SCN. The noticee vide his letter dated September 16, 2011 sought for an opportunity of personal hearing. The personal hearing in the matter was scheduled on November 7, 2012 which was later postponed to December 4, 2012 as per the noticee's request. Meanwhile, the noticee vide his letter dated November 8, 2012 filed his written submissions in the matter and also stated that he would like to forgo the opportunity of personal hearing. The noticee vide his written submissions has, *inter alia* submitted as under:
 - i. All the trades were on the CSE's C-Star platform and were made for clients. There have been no proprietary trades for self / relatives or employees. The transactions have been

- done on orders received from the clients and have resulted in solely brokerage income as evident from books of accounts of the noticee
- ii. The Calcutta Stock Exchange is functioning with a handful of members. It is an "illiquid exchange" with turnover in selected companies concentrated among few brokers, in scrips quoted exclusively on the CSE. In this background "matching" of trades and "turnover concentration" become natural and cannot be extrapolated into "synchronized trading" or any sort of illegal practices.
 - iii. The noticee had transacted in the scrip based on the instructions of clients, and therefore, cannot be held liable for any influence of price / volume in the scrip. There was no squaring off transaction. A stock broker cannot be held responsible for the transactions of its clients unless it is established that the broker is aware of the intentions of the clients. Referring to the order of SAT in *Kasat Securities Pvt. Ltd. vs. SEBI* wherein tribunal has held that even if synchronization of trades is established, the same is not sufficient to hold that the broker is in violation of any regulation or liable to any penalty unless there is material record to establish that he was aware of the same. It is submitted by the broker that they are not aware that any trades have the potential to be circular / synchronized in nature. It was submitted that merely because they have traded on behalf of the clients in the scrip, during the investigation period, it cannot lead to the conclusion that they knew the nature of the transaction.
 - iv. The noticee has requested for dropping all the charges in the SCN against him.
8. I have carefully considered the Report, the SCN, the submissions of the noticee and other relevant material available on record. The issue for my consideration is whether the noticee violated the provisions of regulation 7 read with A (2) of Code of Conduct read with Schedule II of the Stock Brokers Regulations. In terms of regulation 7 of the Stock Brokers Regulations every stock broker is obligated to abide by the Code of Conduct as specified at Schedule II. Clause A (2) of the Code of Conduct for Stock Brokers provides that "*A stock-broker, shall act with due skill, care and diligence in the conduct of all his business.*"
9. I note that the noticee has not disputed his transaction as described in the Report. I also note that there is no allegation of connection/relation amongst the four brokers who had substantially traded in the scrip or amongst the noticee and his clients. Further, synchronization of trades in question, with respect to price, time and quantity on any day, has not been established in this case.
10. I note that the price of the scrip increased from ₹18.50 to ₹380/ during the investigation period. The Company is a small cap company with issued paid-up capital of ₹4.26 crore. I also note that

for the years ended March 31 2005, March 31, 2004 and March 31, 2003 the Company incurred loss (before tax) of ₹0.51 lakh, ₹0.66 lakh and ₹0.17 lakh, respectively. As on March 31, 2005, the Company had negative earnings per share (EPS) of 0.05. Thus, the Company was continuously in losses, which does not justify such sharp increase in the price of the scrip.

11. The noticee traded for 357600 shares of the Company during the investigation period which accounted for 10.15% of the market volume and executed cross deals continuously for 11 days for 1,81,850 shares which accounted for 50.85% of the noticee's total traded volume (357600 shares) in the scrip during the investigation period. It is also observed that the price of the scrip went up from ₹375/- to ₹380/- during the same period.
12. It is difficult to understand the interest of the clients of the noticee in trading in the said scrip with weak fundamentals during the investigation period. Therefore, when such cross transactions were being placed on regular basis on behalf of the clients where the noticee was both buying broker and selling broker, the noticee should have exercised its professional diligence while executing those transactions.
13. In the facts and circumstances of the case, the noticee, being a stock broker, was expected to be especially cautious when trading takes place in hitherto illiquid scrip of the Company that was devoid of any fundamental. I, therefore, agree with the findings and recommendations of the DA.
14. I, therefore, in exercise of the power conferred upon me by virtue of 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 issue warning to the noticee Mr. Ashok Kumar Kayan [Registration No. INB 030491111], Member, the Calcutta Stock Exchange Limited. I further direct the noticee to strictly comply with the securities laws and other requirements which govern its conduct in the securities market.

DATE: December 31st, 2012

PLACE: MUMBAI

RAJEEV KUMAR AGARWAL
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA