

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 36 of 2013

Order Reserved On : 08.10.2013

Date of Decision : 31.10.2013

Bhanwar Lal Paliwal
2, Kesar Deep, Debhar Colony,
Pratap Nagar,
Udaipur – 313 001
Rajasthan.

...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051.

...Respondent

Mr. Manish Chhangani, Advocate with Mr. Shubhadip Choudhari, Advocate
for Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Mihir Mody and
Mr. Pratham V. Masurekar, Advocates for Respondent.

CORAM : Justice J.P. Devadhar, Presiding Officer
Jog Singh, Member
A.S. Lamba, Member

Per : A.S. Lamba

1. The present appeal has been preferred by Shri Bhanwar Lal Paliwal (hereinafter referred to as ‘appellant’) against adjudication order no. BM/AO-61/2012 dated November 2, 2012, passed by Adjudicating Officer, Securities and Exchange Board of India (hereinafter referred to as ‘respondent’), imposing monetary penalty of ₹ 5 lakh on appellant for

violation of Regulations 3(a), (b), (c) & (d) and 4(1), 4(2) (a), (b), (e) & (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations').

FACTS OF THE CASE :-

2. Respondent conducted investigation in trading of scrip of Asian Star Company Limited (hereinafter referred to as 'ASCL') for period October 10, 2008 to November 20, 2008 (hereinafter referred to as 'Investigation Period' or 'IP'). Shares of ASCL are listed at Bombay Stock Exchange ('BSE'). It was observed that during investigation period price of scrip went up from ₹ 1,240.00 on October 10, 2008 to ₹ 1,306.15 on November 20, 2008 (18.57% rise in 28 trading days), and during same period Sensex had fallen by 19.73% (i.e. from 10,527.85 to 8,451.01). Subsequent to investigation period price of scrip started falling and closed at ₹ 905 on January 30, 2009.

3. Role of brokers and their clients, who traded in scrip of ASCL on BSE, was scrutinized, and it was observed certain entities found connected had allegedly indulged in circular / reversal synchronized trading, in such a manner that led to creation of artificial volume in scrip.

4. It was alleged that one of the connected entities viz., appellant trading through broker Triveni Management Consultancy Services (hereinafter referred to as 'Triveni') indulged in circular/reversal synchronized trades with other brokers and clients and violated Regulations 3(a), (b), (c) & (d) and 4(1), 4(2) (a), (b), (e) & (g) of PFUTP Regulations

and consequently appellant is liable for monetary penalty under Section 15HA of SEBI Act, 1992.

5. Show cause notice No. EAD-6/BM/VS/27361/2010 dated November 23, 2010 ('SCN' for short) was issued to appellant under rule 4 of Rules to show cause as to why an inquiry should not be held and penalty be not imposed under Section 15HA of SEBI Act for alleged violation specified in said SCN. Vide reply dated February 9, 2011 Noticee denied charges leveled against him and inter alia submitted following:

- a. That I am 73 year old a retired senior citizen residing in a small town Udaipur in Rajasthan and leading a very simple life. It may be noted that I am suffering from chronic heart problem, have undergone Neurosurgery, recently right leg's knee replaced and have been advised to not to take travel from past years.
- b. That I have never indulged in any kind of trading in the securities market and am unaware of any trading in the scrip of ASCL.
- c. That no alerts with regard to the synchronized and reversals in the scrip of ASCL have been provided to me.
- d. I deny that I have executed any transaction in the scrip of ASCL through broker Triveni. I submit that not even a single order was placed by me for the alleged transactions in the scrip of ASCL. I put SEBI and Triveni to the strict to strict proof to prove that the alleged trades were carried out by me, the orders were placed by me, there was any payment made by me, there

was any payment made from my end in order to purchase or sell the shares of ASCL, the contract notes were received by me and the bills/ledgers were acknowledged by me.

- e. The SCN fails to provide me the details as to what was my contribution in the alleged 26.25% of the alleged contribution of Triveni in gross purchase and sales.
- f. It is submitted that no details of the alleged synchronized trades executed by me has been provided in the said SCN.
- g. I strongly deny any linkage with Triveni and thus the alleged trades executed by me cannot be combined with the trades executed by Triveni on behalf of third person.
- h. SCN fails to provide any details of my trades thereby making the allegation of reversal/ circular trades as completely baseless and fallacious.
- i. I strongly deny being linked with the alleged other parties who traded in the scrip of ASCL through Sunil Mehta, Ajay Roongta, Manish Mathur or Triveni and forming the alleged group i.e. Mehta group and entering into synchronized/reversal trades with these entities. My relationship with Sunil Mehta is on the basis of my submission that Sunil Mehta has opened my account with Triveni. On the basis of this relationship I am linked to various other clients of Triveni and others who have traded in the scrip of ASCL and have together formed a group. Such allegation is as vague as it can be and the same cannot be

made as a basis for holding me liable for any manipulation as alleged.

- j. I deny that I have traded in scrip of ASCL and have executed any synchronized and structured trades and I have never been part of Mehta group and have no link/ connection/ nexus/ with any of alleged entities. Further it is submitted that no details of trading which were in nature of reversal of trade/ circular trade has been provided to me.
- k. That these trades were never executed by me and it seems that the broker has done unauthorized trades in my account and same came to my knowledge when this matter was brought into my knowledge by SEBI.
- l. That not even single evidence has been shown up by SEBI in the SCN that I was actively forming part of the alleged Mehta group and alleged trades were in my knowledge and as well planned scheme said trades were executed by me.
- m. It is pertinent to note that total number of shares allegedly traded by me was only 57162 out of the total of 1974219 i.e. only 2.89% of the total market volume. I failed to understand as to how only 2.89% of shares allegedly traded by me can contribute to significant increase in volume and trades.
- n. That I have never operated my account and all transactions executed in my account seems to be done by the broker. It is pertinent to note that even at time of investigations I have

submitted before SEBI that I have never entered into alleged trades and trades were never authorized by me.

- o. That there is not an iota of evidence which shows that I have funded alleged transactions of others.
- p. With regard to contention that I have acted as a name lender and have allowed others to use my account, it is humbly submitted that the said allegation is baseless and not grounded on any king of evidence.
- q. It is submitted that the alleged buy/ sell quantity of mine in synchronized trades compared to total no. of synchronized trades amounts to only 1.6%. further, alleged buy quantity of mine in structured trades compared to total no. of structured trades amounts to only 1.18% and the alleged sell quantity of mine in structured trades compared to total no. of structures trade amounts to only 1.60%. This clearly shows that even assuming I have executed alleged trades the charge does not satisfy on ground that alleged trades of mine were synchronized and structured in huge quantity and thereby an active role was played by me in alleged manipulation.
- r. SEBI has not provided me the copy of KYC form, and at this age of mine I don't remember as to who had introduced me to Triveni. In relation to statement of Sunil Mehta, it is submitted that I have not been provided copy of statement and therefore I am at loss to comment on same. Merely knowing Sunil Mehta doesn't amount to collusion and charge of acting in tandem with each other fails completely.

- s. SCN fails to provide information as to whether orders were placed by me or at my instructions, whether I was in contact with broker or any of the counterparty, what was mode of placement of order by me, whether any funds were transferred by me to any of entities for alleged manipulation, whether I was having knowledge of any such alleged manipulative trading in my account.
- t. I fail to understand that how mere statement of one Mr. Sunil Mehta that he knows me for last 10-15 years can be made as basis of alleging connection of mine with alleged Mehta group.
- u. That there is no business or financial connection with any of alleged entity.

6. In interest of natural justice and in order to conduct an inquiry as per rule 4 (3) of PFUTP Rules, appellant was granted an opportunity of personal hearing. Authorized Representative (for short 'AR') appeared for hearing on May 10, 2011 and undertook to submit further submission by May 18, 2011. AR further submitted that appellant came to know that he has traded and that his name was unauthorizedly used by the broker when SEBI Officials visited his place for recording his statement on March 10, 2010. AR submitted that appellant has not taken any action against broker for alleged unauthorized trading in his account and undertook to submit copy of demat account for period 2008-2009 of the Noticee. Vide letter dated May 31, 2011 Noticee submitted his demat account with Arcadia Shares and Stock Brokers Ltd. for year 2008-2009 and submitted that demat account

with Arcadia bearing account No. 1203440000145202 was closed on appellant's request on March 18, 2009.

CONSIDERATION OF ISSUES AND FINDINGS:-

7. Allegations against appellant are as follows:

- a) The Mehta group entities were connected to each other and with appellant.
- b) Appellant entered into circular, reversal, synchronized and structured trades with Mehta group and influenced price of the scrip of ASCL and created artificial volume.

8. In view of above it is alleged that appellant violated provisions of Regulation 3(a), (b), (c) & (d) and 4(1), 4(2)(a), (b), (e) & (g) of PFUTP Regulations.

9. It will be appropriate to refer to relevant provisions of PFUTP Regulations and which reads as under:

“3. Prohibition of certain dealings in securities

No person shall directly or indirectly-

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;*
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*

- (d) *engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.*

4. Prohibition of manipulative, fraudulent and unfair trade practices

- (1) *Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*
- (2) *Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-*
- (a) *indulging in an act which creates false or misleading appearance of trading in the securities market;*
 - (b) *dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss;*
 - (c) *.....*
 - (d) *.....*
 - (e) *any act or omission amounting to manipulation of the price of a security;*
 - (f) *.....*
 - (g) *entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;”*

FINDINGS:-

10. Findings in connection with role of appellant on violations as alleged in the case, as follows:

- (a) Price of scrip opened at ₹ 1,240.00 on October 10, 2008 while it closed at ₹ 1,101.55 on the same day. Closing price of scrip

on November 20, 2008 was ₹ 1306.15 (close to close 18.57 % rise in 28 trading days). During same period Sensex had fallen by 19.73 % (from 10,527.85 to 8,451.01). Total traded quantity for entire investigation period on BSE was 1974219 shares. Subsequent to investigation period price of scrip started falling and closed at ₹ 905 on January 30, 2009.

- (b) There was neither price sensitive news/announcement which might have supported the price rise in scrip and financial results of the company do not justify price rise in scrip of ASCL. On October 16, 2008 company declared results of quarter ending September 30, 2008 which showed that net profit had declined from ₹ 110.659 million to ₹ 106.439 million than same quarter of previous year.
- (c) Analysis of trading pattern revealed that broker Triveni had maximum concentration in gross purchase at 26.25 % followed by broker B P Equities Pvt. Ltd. (hereinafter referred to as "BP Equities"), Swastika Investment Ltd (hereinafter referred to as "Swastika") and Emkay Global Financial Services Ltd (hereinafter referred to as "Emkay Global") at 19.27 %, 17.97 % and 16.97 % respectively. The Noticee traded through BP Equities and bought 320224 shares and sold 320224 shares during the investigation period which accounted for 16.22% and 16.22% respectively of the market volume during the investigation period.

(d) From trade and order log analysis it is noted that appellant and the entities i.e. viz: Sunil Mehta, Jitendra Jain, Sandeep Jain, Pradesh Nimawat, Arun Sakpal, Usha Mehta, Narendra Sanghi, Bharat Jain, Meen Been Elastomers, Dilip Rathore, Alpesh G Dand, Manisha Mardia executed synchronized/structured trades. These entities were found to be linked with each other through Sunil Mehta, Ajay Roongta and Manish Mathur. Ajay Roongta, who accepted his connection with Sunil Mehta, was found to be providing funds to Arun Sakpal for his pay in obligation. Manish Mathur was Chief Operating Officer of the broker Triveni. Together these entities were termed as "Mehta group". The relationship/connection of the Mehta group entities is elaborated below:

- i. Noticee has submitted before investigation that it was Sunil Mehta who opened his account with Triveni. Sunil Mehta admitted to have known Noticee, as Noticee's son Madhusudan Paliwal was his friend. Further from trading pattern it was observed that the counter party to trades of Noticee was Sunil Mehta.
- ii. From the KYC of Noticee it is observed that Jitendra Jain had signed as introducer
- iii. Sunil Mehta is the son of Usha Mehta and shares same phone number (9322123257) as well as joint bank account (HDFC Kandivali Bank account No. 01821000063096) with Usha Mehta.

- iv. The trading account of Usha Mehta was admittedly operated by Sunil Mehta.
- v. Sunil Mehta has submitted before investigation that Jitendra, Pradesh, Ajay Roongta and Manish Mathur were his friends.
- vi. Sunil Mehta has entered into bank account transaction with Suresh, Jitendra, Gopal Lal Mathur, Seema Mathur (Wife of Manish Mathur, CEO of the broker Triveni) and Triveni (even though Sunil Mehta did not trade through the broker Triveni in the scrip of ASCL).
- vii. Sunil Mehta, Usha Mehta and Jitendra were introduced to the broker Arcadia by Suresh and Pradesh.
- viii. Jitendra has provided email id and phone number (9322123257) of Sunil Mehta in the KYC with the broker Emkay Global and address (Evershine Millenium Park, EMP 47, Flat no. 1804, Thakur Village, Kandivali (E), Mumbai, Maharashtra, 400101) and phone number (9322123256) of Sunil Mehta in the KYC with BP Equity. Further Sunil Mehta has submitted that Jitendra was his friend and trading account of Jitendra was being jointly operated by him and Jitendra. Sometime he used to place orders and sometime Jitendra used to place orders. Sunil Mehta and Jitendra Jain hold joint account number 1821000064427 with HDFC, Kandivali.

- ix. Jitendra has entered into bank account transactions with Sunil Mehta, Usha Mehta, Anjana Mehta (wife of Sunil Mehta), Gopal Lal Mathur (Father of Manish Mathur, CEO of Triveni). Fund movement was also observed between Jitendra and the broker Triveni though Jitendra did not trade through Triveni in the scrip of ASCL.
- x. Suresh is admittedly friend of Sunil Mehta and it was observed that Suresh dealt in the scrip on his advice. Further Suresh and Pradesh were partners in their firm Siddhi Shares and share the same office in Udaipur.
- xi. Sunil Mehta had transferred funds to Suresh who further transferred it to the broker Anagram for his pay in obligation and to the broker Swastika for the pay-in-obligation of Sandeep.
- xii. Sandeep and Pradesh are known to each other for 7-8 years and are friends. For pay in obligation of Sandeep cheques from the account of Pradesh were deposited.
- xiii. Sandeep was introduced to broker Swastika by Jitendra and the address of Jitendra mentioned in the KYC of Sandeep with Swastika is same as that of office of Suresh and Pradesh.
- xiv. Arun Sakpal and Ajay Roongta used to work in the same branch of the broker Bakliwal. Ajay Roongta has accepted that he had provided funds to Arun Sakpal.

- xv. Narendra Sanghi has submitted that he is friend of Ajay Roongta. Further, Ajay Roongta transferred funds to Narendra which was utilized by Narendra towards his pay in obligations.
- xvi. Alpesh Dand has submitted that Triveni was dealing in his account and he had allowed them to deal in the scrip (while Triveni suggested them to deal in the scrip) under the overall limit of Rs. 150000/-.
- xvii. Manisha Mardia was the client of Triveni and submitted that Triveni suggested her to invest in the scrip. She decided the overall exposure limits and the actual buy and sell was done by Triveni on their own terminal.
- xviii. Pradesh provided email Id of Sunil Mehta in the KYC with First Global. He stated before the IA that his account with First Global was opened by his friend (i.e. Sunil Mehta) with his consent. He has also stated that he had borrowed funds from Sunil Mehta for the purpose of trading.
- xix. Pradesh was introduced to Bakliwal by Sunil Mehta and the address mentioned in the KYC is same as that of Sunil Mehta.
- xx. Rajnish Jain has submitted that he knows Sunil Mehta through a common friend Ajay Roongta. Rajnish was introduced to Bakliwal by Ajay Roongta.

- xxi. Ajay Roongta submitted that Sunil Mehta was introduced to him by Manish Mathur.
- xxii. Both Sunil Mehta and Manish Mathur have submitted that they are friends. Further, there were fund flow between Sunil Mehta on one hand and Seema Mathur and Gopal Lal Mathur, wife and father of Manish Mathur respectively, on the other hand.
- xxiii. A demand draft issued by Jitendra Jain in favour of Bharat Jain was deposited by Sunil Mehta in the bank account of the Noticee.

It can be seen from the above that the entities including the Noticee are interconnected with each other.

- (e) Issue of involvement of appellant in manipulating scrip of ASCL is now looked into, which shows that Mehta Group was found to be entering into transactions which were in nature of reversal of trade/ circular trade. Most of these transactions were in synchronized trades (less than one minute difference between buy and sell orders) and structured trades (i.e. not only time of buy and sell order was within 1 minute but the order price and quantity was also matching). It is seen that large numbers of synchronized trades were being entered into mostly by few brokers trading for their clients on almost every traded day during IP, and out of total 6953 number of synchronized deals the contribution of the brokers were as follows:- Triveni contributed 1903 deals while BP Equities,

Swastika, Emkay Global, India Infoline, contributed 1224, 1396, 1058, and 325 deals respectively. It is also noticed that out of these synchronized deals large number of deals were also structured (i.e. not only time of buy and sell order was within 1 minute but the order price and quantity was also matching). Total volume generated by Mehta Group, during IP, through trading was 19,74,219 shares, out of which 17,33,986 shares (87.83% of total volume) were synchronized trades and 8,87,424 shares (44.95% of total volume) were structured trades. These synchronized and structured trades were executed by Mehta Group through trading with one another, through 5 brokers, named here.

- (f) It is also seen that Mehta group dealt in synchronized and structured trades which amount to significant percentage of total market volume both in terms of quantity traded as well as number of trades, while daily net trade has remained insignificant. When most of trading was being contributed in synchronized trades by Mehta group, price of scrip was going up while Sensex was going down.
- (g) It has been seen from above that when appellant was placing order there was exact matching of price, quantity and time and further during the investigation period appellant continued to buy and sell shares in such manner with Mehta group from November 10, 2008 to November 20, 2008.
- (h) Noticee in his reply and statement before Investigation Authority has denied having any relationship with

counterparties, and stated that he is not aware of any trading by him in scrip of ASCL and holds Triveni responsible for alleged manipulative trading in his account. Noticee submitted that he was not provided with all necessary documents with the SCN. It may be mentioned that documents on basis of which charges were framed and SCN was issued were provided to Noticee as Annexure 1 to 8 and hence all relevant documents were provided to the Noticee. In SCN it was alleged that Noticee, client of Triveni, was found to have entered into synchronized and structured transaction with Sunil Mehta, Jitendra Kumar Jain, Sandeep Jain, Suresh Hanswal and Arun Manohar Sakpal for 8 out of 28 trading days during investigation period with above mentioned counterparties and acted in concert with counterparties in manipulating price of the scrip. It is noticed that the effective number of counterparties was only five and all were found to be related with each other. It was not possible unless there is some understanding that almost all of trade will match with same counterparties that too in synchronized transactions over a period of time and further half of the transactions were structured trades.

- (i) It is seen that orders of appellant were being placed through broker Triveni whose clients were also part of Mehta group and found to be trading in a synchronized and structured manner. Triveni was found to be related to Sunil Mehta through its Chief Operating Officer, Manish Mathur. Noticee before IA and before hearing has denied his relationship with

entities belonging to Mehta group. Noticee in his submission before investigation also submitted that he was not having knowledge of any trading in his account. It is observed that appellant before IA in his statement recorded on oath has submitted as follows:

"Q1. How many brokers are you traded with? Provide details.

A. I am not trading with any broker, however I remember once Mr. Sunil Kumar Mehta came with some forms of Triveni Broker and asked me to open account. I signed the documents but later I instructed him to close the account as I do not intend to do trading."

From above AO noted that appellant was aware of his opening of trading account with broker Triveni. From KYC of Noticee it is observed that Jitendra Jain had signed as introducer. Triveni executed trades in account of Noticee and trades were synchronized/structured, circular in nature that too each time with clients of the Mehta group. This entire pattern can't be mere coincidence. Noticee claimed that he was not aware of trades and broker has done unauthorized trades, if that be so Noticee should have taken action against the broker and filed complaint for alleged unauthorized trade. Admittedly, Noticee has not initiated any action against the broker. Circumstances brings out clearly that appellant lend his name and allowed broker to mis-utilize his account for trading and manipulating in scrip of ASCL and thus equally responsible for manipulation in scrip of ASCL. His relation with Triveni, Sunil Mehta, Jitendra Jain and synchronizing trades with clients of Mehta group makes his manipulative role all

more clear. Hence, submissions made by appellant are not acceptable.

- (j) Thus, from transactions entered into between Noticee and Mehta group it is seen that appellant had nexus with counter party clients and along with Mehta group entities executed large number of synchronized trades, placed orders higher than LTP and were manipulating price of scrip of the company. Appellant individual trading volume was 2.9% of total market buy/ sell volume but when taken together with Mehta group such manipulative trades constituted 87.83% of the market volume. Role of appellant cannot be taken in isolation but is to be considered alongwith other connected entities as chain would otherwise break and when seen together with Mehta group was found to be part of whole game plan in manipulation of scrip of ASCL.

11. AO found that trades as executed by appellant were not of one instance but such transactions were carried out over a period of time. This coupled with repeated nature of such transactions clearly establishes malafide intent of appellant while entering into such transactions. It is pertinent to note that such trading patterns lead to price fluctuation and creates false appearance of trading in securities market and thereby tending to mislead the gullible investors. AO also found that during investigation period there has been significant trade volumes (with daily average at 70,000 shares) in scrip despite very low floating stock; which has come down to mere 14,392 shares at end of September 2008 quarter. AO found that at BSE price of scrip opened at ₹ 1,240.00 on October 10, 2008 while it

closed at ₹ 1,101.55 on same day. Closing price of scrip on November 20, 2008 was ₹ 1306.15 (Close to close 18.57 % rise in 28 trading days). During same period Sensex had fallen by 19.73 % (from 10,527.85 to 8,451.01). Subsequent to the investigation period price had started to fall and closed at ₹ 905 on January 30, 2009. There was no price sensitive news/announcement which might have supported the price. Also financial results of the company do not justify the price rise in the scrip of ASCL. Trading pattern not only created artificial volume but also helped in artificial price rise of shares of ASCL. All these leads to malafide intention of Noticee along with connected entities to create artificial market and price rise in scrip of ASCL. Hence the submissions made by appellant are not accepted.

12. The Hon'ble SAT in *Ketan Parekh Vs. Securities & Exchange Board of India* (Appeal No. 2 of 2004) held that in order to find out whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available.

13. In consideration to the above and facts of present case, clearly brings out ominous role played by appellant in executing synchronized and structured deals, circular/reversal trades with the Mehta Group entities in executing manipulative trades in market which indulged an element of fraud and unfair trade practices in game plan of manipulation.

14. Regulation 3 prevents any person from buying, selling or dealing in securities in fraudulent manner, use or employ any manipulative or

deceptive device in contravention to the provisions of the Act, employ any device, scheme or artifice to defraud in connection with dealing in securities or engage in any act, practice, course of business which operates as fraud or deceit upon any person in connection with any dealing in or issue of securities. Regulation 4(1) of PFUTP lays that no person shall indulge in a fraudulent or an unfair trade practice in securities. Regulation 4(2) (a) of PFUTP, prohibits a person from indulging in an act which creates false or misleading appearance of trading in the securities market. Regulation 4(2)(b) of PFUTP prohibits dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss. Regulation 4(2)(e) lays down that any act or omission amounting to manipulation of the price of a security will amount to manipulation and Regulation 4(2)(g) inter alia, prohibits entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security.

15. As can be seen from the above intention of appellant was to create artificial volume in the scrip of ASCL and to influence the price of the scrip during the investigation period. Such acts of manipulative trading by appellant helped in creating artificial demand and thereby leading to a false appearance of trading in scrip of ASCL and also causing fluctuations in price of scrip of the company. Hence in light of facts of case and materials available on record, it is seen that appellant has violated provisions of Regulation 3 (a), (b), (c), (d), 4(1) and 4(2)(a), (b), (e) & (g) of PFUTP Regulations.

16. Next issue for consideration is as to what would be monetary penalty that can be imposed on the Noticee for violation of Regulation 3 (a), (b), (c), (d), 4(1) and 4(2)(a), (b), (e) & (g) of PFUTP Regulations. The Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that "In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant...".

17. Thus, the aforesaid violations by the Noticee make him liable for penalty under Section 15HA of SEBI Act, 1992 which read as follows:

"15HA - Penalty for fraudulent and unfair trade practices
If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher."

18. While determining the quantum of penalty under sections 15HA, it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:-

"15J - Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely: -

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default."*

19. It is difficult, in cases of such nature, to quantify exactly the disproportionate gains or unfair advantage enjoyed by an entity and consequent losses suffered by investors. It is noted that the investigation report also does not dwell on extent of specific gains made by clients or broker/s. Suffice to state that keeping in mind practices indulged in by appellant, gains per se were made by Noticee in that it traded in scrip in a manner meant to create artificial volumes and liquidity which is an important criterion, apart from price, capable of misleading investors while making an investment decision. In fact, liquidity/volumes in particular scrip raise the issue of 'demand' in securities market. Greater liquidity, higher is investors' attraction towards investing in that scrip. Hence, anyone could have been carried away by unusual fluctuations in volumes and been induced into investing in said scrip. Besides, this kind of activity seriously affects normal price discovery mechanism of the securities market. People who indulge in manipulative, fraudulent and deceptive transactions, or abet carrying out of such transactions which are fraudulent and deceptive, should be suitably penalized for the said acts of omissions and commissions. Noticee bought 57162 shares and sold 57162 shares which were manipulative trades and such trades of the Noticee constituted 2.9 % of the market volume and 98.11% of their own trade. With regard to repetitive nature, I find that there was substantial number of such trades repeated over a number of days during the investigation period. Hence, default of appellant was repetitive in nature.

20. After taking into consideration all the facts and circumstances of the case, penalty of ₹ 5,00,000 (Rupees Five lakh only) under section 15HA of

the SEBI Act, on appellant which will be commensurate with the violations committed by him, is imposed.

Analysis of findings of adjudicating officer:-

21. From perusal of entire case, connected documents, submissions of Learned Advocates on behalf of appellant and respondent, it is admitted position that trade volumes of scrip ASCL were manipulated to show higher trading volumes; certain entities called 'Mehta Group' traded amongst each other and engaged in circular, reversal trades to increase volumes that created buying pressure and which increased price of scrip during IP; these entities also executed a large number of synchronized trades and after half of these synchronized trades were structured; all entities of Mehta Group traded through a few brokers (5 brokers had very high percentage in buy and sell trade in entire volume of trade) and these manipulations in volume, thus price, of scrip was masterminded by Sunil Mehta, who along with a few others of entities of Mehta Group, perpetrated the entire manipulations of his own behalf and on behalf of some of the entities of Mehta Group.

22. One such entity, who appears totally ignorant of above manipulations by Sunil Mehta and Mehta Group in trading of ASCL during IP; appears to be Bhanwar Lal Paliwal. The Tribunal is convinced that manipulations in scrip of ASCL took place, during IP leading to increase in volumes and price of scrip went up during IP; when SENSEX during the same period came down and there was no corporate announcement / sensitive news that could have caused upward price movement of scrip during IP. However, it is also seen that all so called connected / related entities in Mehta Group have been painted with same brush, irrespective of their direct / indirect

involvement or degree of involvement in trading in scrip of ASCL during IP.

23. All connected / related parties in Mehta Group have been held violative of PFUTP Regulations and brokers, in addition, have been held violative of Brokers Regulations. Here, it may be mentioned that few facts have not been stated correctly by AO – appellant traded through BP Securities and bought 320224 shares and sold 320224 shares during IP and accounted for 16.22% and 16.22% respectively of market volume during IP. In fact appellant's broker was Triveni and shares traded by him were only 57,162 out of total 19,74,219 i.e. only 2.89% of total market volume. The shares traded attributed to appellant are in fact traded by Sunil Mehta. Similarly broker who traded on behalf of appellant was Triveni and not BP Securities.

24. As a matter of fact AO has adopted similar format for dealing with all entities included in Mehta Group and concerned 5 brokers and has tried to cut and paste the format to suit individual entities and “perhaps” this is the reason for such kinds of mistakes. This is the reason why it was stated earlier that all entities of Mehta Group and connected brokers, have been painted by same brush, which is not correct or desirable approach to deal with the issue.

25. In above context, it may be mentioned that each entity of Mehta Group is an individual with his / her personality, character and nature and has traded or misled into trading or ignorant of trading in ASCL scrip and has presented his or her version in reply to SCN served on him / her and factors mentioned in reply to SCN by him / her should have been taken into account, while dealing with that individual and this generic approach

adopted by AO to deal with all entities of Mehta Group may not be proper and may lead to injustice, which this Tribunal has to guard against.

26. Again, it may be mentioned that generalistic approach adopted by Learned AO with all entities of Mehta Group deal with all entities in same way for proving the charges against them. Here, in fact, two generalistic approaches exist – one deal with entities who traded for themselves and also traded on behalf of other entities of the Group and second approach is to deal with entities, who had allegedly lent their names to first group – knowingly or unknowingly, to trade on their behalf. As a matter each individual of second group should have dealt more carefully and individually, instead of dealing with this group generalistically, by asking them whether they instituted proceedings against a member of first group; who traded on their behalf with his / her authorization and when, invariably, the reply is in negative, it has been concluded this each entity of second group is equally responsible for the alleged manipulative trade in scrip of ASCL and aided / abetted in manipulation of volume / price of ASCL scrip.

27. In context to proving allegations of manipulation of scrip of ASCL on part of this second group of entities, proof should have been backed by more investigation, like whether any concrete evidence of active manipulation of volume / price of ASCL against these entities exist. This proof could have been authorization by second group entities to one member of first group to trade in scrip of ASCL on his / her behalf or some intimation to him / her from broker about trading in his / her demat account or some entry in his bank account that some payment was received or made

for his / her account for purchase / sale / profit for dealings in scrip of ASCL in that account, etc.

28. Here, it may be mentioned that quite a few of entities of second group are known / related to first group members, who traded on his / her account and are in fact gullible / innocent traders who traded and had been lured by first group members into opening of demat trading accounts with certain traders and trading in these demat trading accounts was, in fact, done by these entities of first group, with or without knowledge of second group entities or they had been promised incentives for allowing their names / accounts for manipulations without these entities knowing that it will be illegal.

29. Now coming to case under appeal, it is seen that appellant is 73 years old retired vice-principal of a school and is dependent on his pension and some income from interest for his livelihood and earns less than ₹ 2 lac in a year. Appellant was known to Sunil Mehta and Sunil Mehta had opened appellant's trading account with Triveni and appellant has denied knowing any other entity connected to Mehta Group. Appellant knew Sunil Mehta through his son Madhusudan Paliwal, who were friends. Nothing is on record, except statement of appellant that he happened to know Sunil Mehta, through whom his trading account was opened with Triveni. Hence, it may be concluded that appellant is not linked to any other entity of Mehta Group, except Sunil Mehta.

30. Appellant has also submitted that he had never traded in shares of ASCL or any other shares of any company. He has also stated that neither any order for trading in scrip of ASCL was placed by him, nor he received / made payment for sale / purchase of ASCL scrip. A perusal of account of

appellant for period March 23, 2002 to August 9, 2009 does not reveals any payment / receipt for his dealing in scrip of ASCL or any other scrip during this period. A perusal of his statement of account in State Bank of Bikaner & Jaipur shows that credits of ₹ 5,17,419 and debit of ₹ 5,28,390 during this period i.e. for 6 years and 4 months, which shows that he is a person of meagre income / expenditure.

31. Regarding reporting of authorized operation of appellant's trading account by Sunil Mehta, for which it has been concluded by AO that appellant aided / abetted trading from his account by Sunil Mehta and he is equally liable for manipulation of scrip of ASCL and hence violative of PFUTP Regulations; it may be stated that such unauthorised operation of trading account has not been reported in most of the cases, especially since Sunil Mehta was friend of appellant's son and appellant was most likely to be unaware of consequences of merely signing for opening of his trading account and that he being a resident of Udaipur, he would have to travel to Mumbai (where unauthorised operation in his account took place) and a person of 73 years is generally not expected to do so. Hence, non-reporting of unauthorized operation of trading account is not conclusive evidence of appellant being a willing party for manipulation in scrip of ASCL and for being convicted and imposition of penalty of ₹ 5 lakh on him.

32. Learned AO has not produced any other evidence to substantiate case of violation of PFUTP Regulations against appellant, except that the fact the appellate knew Sunil Mehta, being friend of his son, who was master mind of manipulation of scrip ASCL, and that appellate signed documents, at instance of Sunil Mehta, to opening a trading account with Triveni, and that KYC of appellant was signed by Jitendra Jain, another entity of Mehta

Group, as introducer and that appellant did not file complaint against Sunil Mehta, for unauthorized operation of his trading account with Triveni. There is no direct evidence, leave alone any substantial or clinching evidence, to show any direct / indirect involvement of appellant with execution of various for manipulate of volume / price of scrip of ASCL. Here the appellant has not dealt with securities of ASCL, directly or indirectly, in a fraudulent manner. Similarly, Regulation 4(1) state that no person shall indulge in a fraudulent or an unfair trade practice in securities. Here, again, the person has to indulge himself, to be violative of this Regulation and aiding / abetting in this regard is not conceived to be indulging.

33. In M/s. Vintel Securities Pvt. Ltd. vs. Securities and Exchange Board of India, SAT has held serious charge of fraudulent and unfair trade practice has been established against appellant without SEBI, even, dealing with trades executed by appellant. The AO has given no reasons whatsoever in support of this conclusion of charges however been proved and order of AO was set aside. This applies to this case also, since there is evidence of appellant having traded in scrip, in question.

34. Another case of Ms. Smitaben N. Shah vs. Securities and Exchange Board of India was referred by appellant which is dealing with allocation of shares to Qualified Institutional Buyers (QIB) and retail investors from Initial Public Offer by Nissan Copper Ltd. and that QIB's were offered exit, at a premium, through synchronized deals, which trades were also used to artificially create volumes and price increase, where ultimately charges of manipulation of volume / price were not upheld and impugned order quashed and without referring to the details of the trades executed by the appellant and without showing as to how it was acting in tandem with

others. This is not the way in which such charges are established. It is not enough to say that the appellant is guilty of the charge. The impugned order must show how the charge has been established. Facts in this referred case appear to be different from present appeal being considered.

35. In view of above, appeal succeeds and impugned order is set aside.

No costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
A.S. Lamba
Member

31.10.2013

Prepared and compared by:

msb