

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PB/AO-59/2010]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

In respect of

MR. BHAVESH PABARI
(PAN. NOT AVAILBALE)

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted investigation in trading in the scrip of M/s KRBL Limited (hereinafter referred to as ‘**KRBL**’) which was listed in Bombay Stock Exchange (hereinafter referred to as ‘**BSE**’), National Stock Exchange (hereinafter referred to as ‘**NSE**’), Delhi Stock Exchange (hereinafter referred to as ‘**DSE**’) and Ahmedabad Stock Exchange. (hereinafter referred to as ‘**ASE**’). The period of investigation in the scrip of KRBL was from June 27, 2003 to December 31, 2003.
2. The role of the brokers, sub-brokers and their clients who had traded in the scrip of KRBL was scrutinized. It was observed during the investigation that certain entities had allegedly indulged in synchronization of deals/reversal trading/fictitious trading in such a manner that led to creation of artificial volume and impacted the price of the scrip.

3. The entities found to have been involved in the alleged manipulation and against whom adjudication proceedings were initiated are divided into three groups on the basis of their trading vis-à-vis relationship as under:-

GROUP-I

Sr. No.	Name of Broker	Name of Client
1.	FMS Securities Ltd.	Bela H. Kayastha
2.	Shri Parshwa Finance (Prop. Piyush Jhaveri)	Digant Rajendra Bhai Desai Ketan R. Shah
3.	P. Suryakant Shares & Stock Brokers Pvt. Ltd.	

GROUP-II

Sr. No.	Name of Broker	Name of Client
1.	Sanchay Fincom Limited	Bhavesh P. Pabari
2.	DPS Shares & Securities Limited	Bhavesh P. Pabari
3.	Jitendra J. Bhabera	Bhavesh Pabari Mitesh Pabari Naresh S. Shah Shravan Kumar Goyal

GROUP-III

Sr. No.	Name of Broker	Name of Client
1.	Adolf Pinto	Gillian Adolf Pinto (connected to the member-daughter)
2.	Vijay Bhagwandas Shah	Own Account
3.	DPS Shares & Securities Ltd.	Dilip Chhabaria, Jignesh Shah, Bhavesh Pabari
4.	Southern Shares & Stocks Ltd.	Om Gayatri Securities (Chirag Pujara), Sunil K. Purohit
5.	Harikishan Hiralal	Vasant Bissa
6.	Manoj Javeri Stock Broking	Ramasudhakaran
7.	Galaxy Broking Ltd.	Chaitnya Raote, Rajesh Kantilal Shah
8.	N.C. Jain	Own Account
9.	Pramodkumar Jain	Arjun Suryavanshi, Sayyed Mustafa Madhusudan Nair

10.	Bharati Thakkar	Sayyed Mustafa, Prem Prakash Thanvi
11.	Uttam Financial Services	Own Account
12.	Pilot Credit Capital Ltd.	Deepak Vyas
13.	Ajmera Associates Pvt. Ltd.	Sunil Purohit, Vikas G. Narnavar

4. It was alleged that one of the entities, viz., Bhavesh Pabari (hereinafter referred to as “**Noticee**”) had violated the provisions of regulations 4(1), 4(2)(a), 4(2)(b) and 4(2)(g) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practice relating to Securities Markets) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”) and therefore, liable for monetary penalty under section 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”).

APPOINTMENT OF ADJUDICATING OFFICER

5. Mr. Piyoosh Gupta was appointed as Adjudicating Officer vide order dated January 17, 2006 under section 15 I of the SEBI Act read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as ‘**Rules**’) to inquire into and adjudge the alleged violations of provisions of the PFUTP Regulations. Consequent upon the transfer of Mr. Piyoosh Gupta, Mr. V.S Sundaresan was appointed as Adjudicating Officer vide order dated November 19, 2007, Subsequent to the transfer of Mr. V S Sundaresan, I have been appointed as the Adjudicating Officer vide order dated December 24, 2009.

SHOW CAUSE NOTICE, HEARING AND REPLY

6. Show Cause Notice No.EAD/EAD-5/PG/92134/2007 dated April 24, 2007 (hereinafter referred to as “**SCN**”) was issued to the Noticee under rule 4(1) of the Rules to show cause as to why an inquiry should not be held and penalty be not imposed under section 15HA of the SEBI Act for the alleged violation specified in the said SCN.

7. I find from the records that, the aforesaid SCN was issued to the Noticee by Registered AD at 203/A, Shreenath Darshan, Navgar Road, Bhayandar, Dist. – Thane. However, it is observed that the said SCN had been returned undelivered. Another attempt was made to deliver the SCN to the Noticee through DPS Shares & Securities Pvt. Ltd., Member BSE (hereinafter referred to as “**DPS**”) of whose, Noticee was a client vide letter dated May 22, 2007. However, DPS did not confirm the delivery of SCN.
8. Subsequent to my appointment, SCN was reissued to the Noticee though M/s Sanchay Fincom Ltd. (hereinafter referred to as “**SFL**”) of whose, Noticee was also a client at the aforementioned address vide letter dated January 07, 2010. SFL vide its letter dated January 21, 2010 informed that at present Noticee was not residing at 203/A, Shreenath Darshan, Navgar Road, Bhayandar, Dist. – Thane and unable to deliver the said notice to him. They also mentioned that apart from the abovementioned address, they did not have any other address of the Noticee in their records.
9. Thereafter, a press notification was issued in the English national daily “Hindustan Times” as well as local newspaper “Sakal” published in Marathi on April 10, 2010 about the SCN requiring the Noticee or its authorized representative to collect the SCN from the office of Adjudicating Officer. It was also mentioned in the said notification that if the Noticee failed to reply to the SCN within 14 days from the date of publication, it shall be presumed that the Noticee did not have any reply to submit and the matter would be further proceeded ex-parte. The press notification was issued as a substitute service, for the Noticee. The copy of SCN was also uploaded on SEBI website i.e. www.sebi.gov.in. However, I find that Noticee neither collected the SCN nor replied to the SCN.

10. In the interest of natural justice and in order to conduct an inquiry as per rule 4 (3) of the Rules, the Noticee was granted an opportunity of personal hearing on June 14, 2010 vide notice dated May 11, 2010. The notice was issued at the aforementioned last known address of the Noticee by hand delivery. However, the same was returned undelivered on May 14, 2010 with remark "person is not staying there".

11. The hearing notice dated May 11, 2010 requiring the Noticee to appear on June 14, 2010 at 10:30 A.M. was uploaded on SEBI website i.e. www.sebi.gov.in. A press notification was also issued in the English national daily "Hindustan Times" as well as in Hindi national daily "Hindustan" on June 11, 2010 about the hearing notice requiring the Noticee to appear on June 14, 2010 at 10:30 A.M. The press notification was issued as a substitute service, for the Noticee. Pursuant to the uploading of hearing notice on SEBI website and advertisement in the newspapers, I note that the Noticee neither appeared on June 14, 2010 nor requested for adjournment of the hearing.

12. In view of the aforesaid steps taken, I am convinced that ample opportunities have been given to the Noticee to explain his case. As per rule 4(7) of the Rules, if any person fails, neglects or refuses to appear as required by sub-rule (3) before the Adjudicating Officer, he may proceed with the inquiry in the absence of such person after recording the reasons therefor. Despite having been given ample opportunities, the Noticee had failed to avail of the same. I am, therefore, compelled to proceed with the matter *ex-parte* based on the material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

13. The issues that arise for consideration in the present case are :
- a) Whether the Noticee had violated regulations 4(1), 4(2)(a), 4(2)(b) and 4(2)(g) of the PFUTP Regulations ?
 - b) Does the violation, if any, on the part of the Noticee attract monetary penalty under section 15 HA of the SEBI Act?
 - c) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of the SEBI Act?
14. Before moving forward, it will be appropriate to refer to the relevant provisions of the PFUTP Regulations, which reads as 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) ...
 - (f) ...
 - (g) *entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security.*

15. Upon examination of data and documents available on record, it is found that the following brokers and clients had bought and sold (gross basis) around 50% of the total shares traded during the period of investigation. It is

also found that the proportion of the net volume to the total gross volume was only 6.52 % (7,00,095 shares out of 1,07,36,152 shares), which shows that the majority of trades were squared off during the period. Out of 112 brokers who have traded in the scrip of KRBL during the investigation period, the following brokers have purchased 55,09,968 shares constituting 51.32% and sold 54,31,949 shares constituting 50.59% of shares of total volume of shares in the scrip of KRBL during investigation period. The details of the transactions of brokers and clients in the scrip of KRBL during the aforesaid period are as under:-

Member Code	Member Broker	Sub-Broker	Major Ultimate Client	Gross Purchase		Gross Sales	
				Shares	%	Shares	%
792	P. Suryakant Share & Stock Brokers P Ltd	Shri Parshwa Finance (Prop: Piyush Jhaveri)	Digant Kantilal Shah Ketan R. Shah	975831	9.09	969645	9.03
226	FMS Securities Ltd	NA	Bela Kayastha	621751	5.79	619900	5.77
204	Sanchay Fincom Ltd	NA	Mr. Bhavesh Pabari	255949	2.38	255949	2.38
303	Jitendra J. Bhabera	NA	Mr. Mitesh Pabari Mr. Naresh S. Shah Shravan Kumar Goyal Mr. Bhavesh Pabari	166626	1.55	166576	1.55
151	DPS Shares & Securities Ltd	NA	Dilip Vikharia ,Jignesh Shah, Bhavesh Pabari	262529	2.45	262429	2.44
13	Adolf Pinto	NA	Gillion Adolf Pinto	369455	3.44	366873	3.42
77	Bhagwand as Shah	NA	Own Account	253520	2.36	253520	2.36
182	Southern Shares & Stocks Ltd	NA	Om Gayatri Securities (Chirag Pujara), Sunil K.Purohit	532993	4.96	534560	4.98
267	Harikishan Hiralal	NA	Vasant Bissa	355750	3.31	355750	3.31
421	Manoj Javeri Stock	NA	Ramasudhakaran	69975	0.65	69975	0.65

	Broking						
513	Galaxy Broking Ltd.	NA	Chaitnya Raote, Rajesh Kantilal Shah	87462	0.81	86962	0.81
519	N.C.Jain	NA	Own Account	267983	2.50	269336	2.51
552	Pramodkumar Jain	NA	Arjun Suryavanshi, Sayyed Mustafa, Madhusudan Nair	96705	0.90	96595	0.90
737	Bharati Thakkar	NA	Sayyed Mustafa, Prem Prakash Thanvi	396834	3.70	396834	3.70
909	Pilot Credit Capital Ltd	NA	Deepak Vyas	71541	0.67	71541	0.67
911	Ajmera Associated Pvt.Ltd	NA	Sunil Purohit, Vikas G.Narnavar	74225	0.69	74325	0.69
779	Uttam Financial Services	NA	Own Account	650839	6.06	581179	5.41
			Total	55,09,968	51.32	54,31,949	50.59
			Total Market Traded Quantity	1,07,36,152		1,07,36,152	

16. I have carefully perused the charges made against the Noticee, the basis therefor, and the material available on record, from there, I find the following:-

- i. The Noticee had traded through Jeetendra J. Bhabhera (hereinafter referred to as “**JJB**”), SFL and DPS.
- ii. A total of 1,07,36,152 shares were traded on BSE during the investigation period.
- iii. Out of the total of 3,33,202 shares purchased and sold by JJB respectively, the Noticee had purchased 32,351 shares and sold 32,351 respectively through JJB during the investigation period.
- iv. Out of the total of 5,11,898 shares purchased and sold by SFL respectively, the Noticee had purchased 2,55,949 shares and sold 2,55,949 shares respectively through SFL during the investigation period.

- v. Out of the total of 5,24,958 shares purchased and sold by DPS respectively, the Noticee had purchased 64,000 shares and sold 64,000 shares respectively through DPS during the investigation period.

17. The role of the JJB, SFL and DPS and their clients (hereinafter collectively referred to as “**Group II**”) with regard to transactions done are as under:

Date of transaction	Bought Qty (no. Of trades)	Bought by Client	Bought From Client (Broker)	Sold Qty (no. of trades)	Sold by Client	Sold To Client (Broker)
17.07.2003 to 12.12.2003	152270 (122)	Bhavesh Pabari (Sanchay Fincom Ltd.)	Mitesh Pabari, Naresh N. Shah, Shravan Kumar Goyal and Bhavesh Pabari (Jitendra J. Bhabhera)	152150 (125)	Bhavesh Pabari (Sanchay Fincom Ltd.)	Mitesh Pabari, Naresh N. Shah, Shravan Kumar Goyal and Bhavesh Pabari (Jitendra J. Bhabhera)
	26494 (18)		Bhavesh Pabari (DPS Shares & Securities Ltd.)	26497 (16)		Bhavesh Pabari / (DPS Shares & Securities Ltd.)

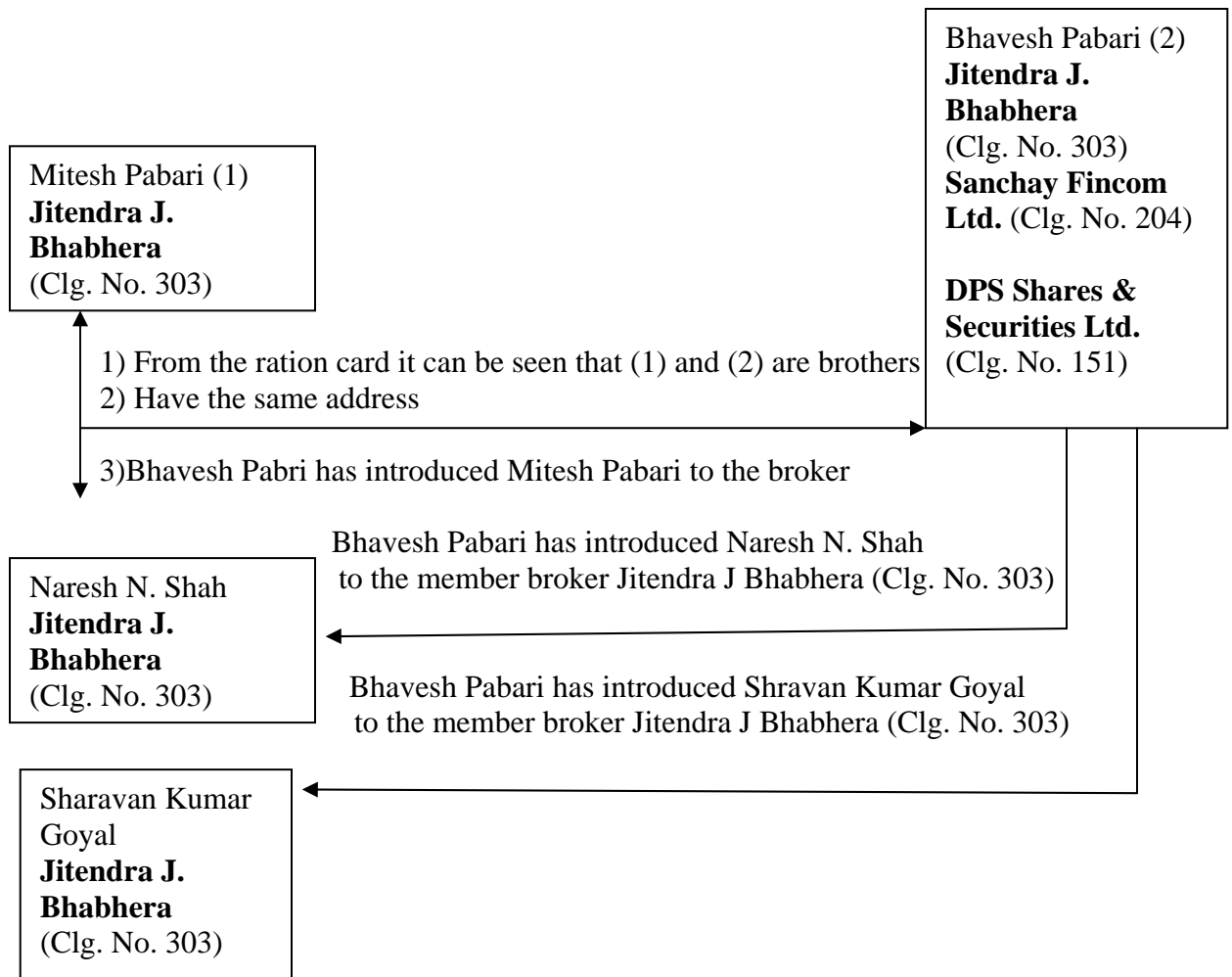
- i. Out of the total of 1,07,36,152 shares, 40,17,724 shares, i.e. 37.42% of the total quantity traded in the market were in the nature of circular and reversal trades involving certain clients/brokers.
- ii. A total of 281 trades comprising of 3,57,411 shares were executed by Group II.
- iii. Out of the total of, 3,57,411 shares of circular, reversal and synchronized transactions by Group II, Noticee had purchased 18,500 shares and sold 18,500 shares through JJB, purchased 1,78,764 shares and sold 1,78,647 shares through SFL and purchased 26, 497 shares and sold 26,484 shares through DPS respectively, in circular, reversal and synchronized transactions.

- iv. Out of 138 trading days covering the period of investigation, circular, reversal and synchronized transactions took place on 111 trading days.
 - v. The trades executed by the Group II which can be called as circular, reversal and synchronized in nature were carried out for 20 trading days out of 111 days.
18. The analysis of trade log and order log, which was provided to the Noticee as a part of annexure to the SCN, reveals the following:
- Noticee and Naresh N. Shah had executed reversal and circular trades on 11 days out of total 20 days of circular trading and reversal of trades. Naresh N. Shah through JJB has bought 83,950 shares and sold 87,070 shares from / to the Noticee trading through JJB comprising of 23.49% and 24.36% of the total circular traded quantity.
 - Mitesh Pabari and Noticee had executed circular, reversal trades on 3 days out of total 20 days of circular and reversal trading. Mitesh Pabari trading through JJB has bought 35,400 shares and sold 32,400 shares from / to Noticee through SFL.
 - Shravan Kumar Goyal has traded with Noticee for 2 days and had executed reversal of trades and circular trading. Shravan Kumar Goyal has bought and sold 14,300 shares from / to Noticee trading through SFL. Noticee has done trades for 8,991 shares continuing for 8 days out of total 20 days (comprising of 53 trades and 50 orders). These clients have done circular trading and reversal of trades through JJB (client code P1032), SFL (client code B039) and DPS (client code B100 & B033).
 - Out of 281 synchronized trades (275 orders) placed amongst the Naresh N. Shah, Mr. Mitesh Pabari, Mr Shravan Kumar Goyal and Noticee (hereinafter referred to as “**Bhavesh Pabari group**”), 104 orders were

such that the time difference between buy and sell order was 0 seconds. This constitutes 37.81% of the total orders placed by SFL, JJB and DPS. Further 103 orders were so placed that the time difference between buy and sell order was 1 second, 20 orders were with time difference of 2 seconds and 17 orders were with time difference of 3 seconds.

- 88.73% of the orders placed by these Bhavesh Pabari group clients were synchronized in nature of reversal and circular trades where the quantity and the price of buy and sell orders matched and the time difference between buy and sell orders were less than or equal to 3 seconds.
 - The delivery for the Bhavesh Pabari group clients was nil.
 - The clients Noticee, Naresh N. Shah, Mitesh Pabari and Shravan Kumar Goyal had traded for 20 days out of 138 days and had executed reversal trades and circular trades on all the 20 days, contributing for 2%-57% of the daily trading volume (average daily volume being approx. 17%) on the days circular trading and reversal trades has been done.
 - The Group II bought and sold the shares among themselves by squaring off the deals, the same often being in a circular manner.
 - The Group II placed the orders for its clients with a time difference ranging from 0-45 seconds, (while orders for 6000 shares, comprising of 0.17 % of the total circular traded quantity, were placed with a time difference of more than 60 seconds) and total orders for 1,25,470 shares were placed where the time difference between the buy and sell orders was nil, comprising 35.11 % of the circular traded quantity.
19. The clients of group II comprised of Noticee, trading through the member brokers, viz, SFL, JJB & DPS and clients Naresh N. Shah, Mitesh Pabari,

and Shравan Kumar Goyal trading through the member broker JJB. They were related / connected to one another as illustrated below :



20. The following findings establish the link between Noticee, SFL, JJB, DPS and their clients:

- i. Noticee who has traded through SFL, JJB and DPS and Mitesh Pabari, one of the clients of JJB are brothers.

- ii. Noticee, who has traded through SFL, JJB and DPS and Mitesh Pabari lived together at the same address.
 - iii. Noticee has introduced Mitesh Pabari to the broker, JJB.
 - iv. Noticee has introduced Naresh N. Shah to the broker, JJB.
 - v. Noticee has introduced Shравan Kumar Goyal to the broker, JJB.
21. It is evident from the above that the Noticee and other clients of Group II, followed a common modus operandi of artificially inflating the price and creating false volumes by executing the synchronized transactions through their brokers. The transactions of the clients were in the nature of synchronized, circular and reversal trading which ensured matching of orders of one client with the other. These orders were put simultaneously or within close proximity of each other for same price and quantity.
22. The Hon'ble SAT, in Ketan Parekh Vs. Securities & Exchange Board of India (Appeal No. 2 of 2004), observed that, *"A synchronized transaction even on the trading screen between genuine parties who intend to transfer beneficial interest in the trading stock and who undertake the transaction only for that purpose and not for rigging the market is not illegal and cannot violate the regulations. As already observed 'synchronisation' or a negotiated deal ipso facto is not illegal. A synchronised transaction will, however, be illegal or violative of the Regulations if it is executed with a view to manipulate the market or if it results in circular trading or is dubious in nature and is executed with a view to avoid regulatory detection or does not involve change of beneficial ownership or is executed to create false volumes resulting in upsetting the market equilibrium. Any transaction executed with the intention to defeat the market mechanism whether negotiated or not would be illegal. 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. The nature of the transaction executed, the frequency with which such transactions are undertaken, the value of the transactions, whether they involve circular trading and whether there is real change of beneficial ownership, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn."

23. The Hon'ble SAT, in Nirmal Bang Securities Pvt. Ltd Vs SEBI (Appeal no. 54-57/2001), observed as follows: - *"BEB has been charged for synchronized deals with First Global. I have examined the data provided by the parties on this issue. I find many transactions between BEB and FGSB. There are many instances of such transactions. I find the scrip; quantity and price for these orders had been synchronized by the counter party brokers. Such transactions undoubtedly create an artificial market to mislead the genuine investors. Synchronized trading is violative of all prudential and transparent norms of trading in securities. Synchronized trading on a large scale can create false volumes. The argument that the parties had no means of knowing whether any entity controlled by the client is simultaneously entering any contra order elsewhere for the reason that in the online trading system, confidentiality of counter parties is ensured, is untenable. It was submitted by the Appellants that it was not possible for the broker to know who the counter party broker is and that trades were not synchronized but it was only a coincidence in some cases. Theoretically this is OK. But when parties decide to synchronize the transaction the story is different. There are many transactions giving an impression that these were all synchronized, otherwise there was no possibility of such perfect matching of quantity price etc. As the Respondent rightly stated it is too much of a coincidence over too long a period in too many transactions when both parties to the transaction had entered buy and sell orders for the same quantity of shares almost simultaneously. The data furnished in the show cause notice certainly goes to prove the synchronized nature of the transaction*

which is in violation of regulation 4 of the FUTP Regulations. The facts on record categorically establish that BEB had indulged in synchronized trading in violation of regulation 47 of the FUTP Regulations. In a synchronized trading intention is implicit."

24. Keeping in mind the dicta of the SAT as reproduced above, I see no reason to take a different view in the present case.
25. The method and the manner in which the trades were executed are the most important factors to be considered in these circumstances. The motive, thereafter, automatically falls in line. Trades like cross deals, reverse transactions, circular trades, and synchronized trades are all executed on the trading screen of a stock exchange. Clearly in almost all the deals, the orders are placed so as to ensure a matching of the buy and the sell quantity and the buy and the sell price with the counter party, with whom a prior tacit understanding exists. The buy and the sell orders are placed at almost the same time between the counter brokers, with just a difference of a few seconds. This proximity in the inputting of orders at the same price and for the same quantity, results in getting them matched, such that there is almost perfect matching in all the trades, with all the three parameters, viz., quantity, price and most importantly, the time required to conclude the trades, which to a large extent indicates synchronization in the logging in of the orders, albeit executed on the screen of the stock exchange.
26. This is what has transpired in the present case. This trend was not noted in a solitary incident or two. Instead, a large number of synchronized trades got matched regularly, that too only between the same set of brokers and the same set of clients in the same scrip, during the same period. The phenomenal regularity with which these clients and their brokers were counter-parties, leads one to conclude, that these transactions were effectively meant to be synchronized. It is my considered belief that

frequency of such trades ensured consistent matching of the orders purely for the purpose of projection of the volumes of the shares of KRBL in a way that was not the market determined volumes, possibly to induce other persons to invest in the said scrip.

27. The fact is that had the aforesaid discussed trades been executed in the normal course of business, the possibility of such perfect matching would not have been possible. The buy and sell prices of one entity were close to the buy/sell rates of the other entity in all the settlements, such that the trades of these entities were always matched. Greater the number of synchronized trades, the larger is the chances of trades not being genuine in nature, which is bound to affect the market equilibrium. A trade can be executed on the screen and still be manipulative in nature. Considering the number of such trades, it is clear that there has been a gross mis-use of the screen based trading system. It is also to be stated that "intention" is inherent in all cases of synchronized trading involving large scale price manipulation and the same was also brought out in the earlier cited case of *Nirmal Bang Securities (P) Ltd. vs SEBI* by the Hon'ble SAT whereby it was observed that "*Intention is reflected from the action of the Appellant. Choosing selective time slots does not appear to be an involuntary action.*" Thus, the very act of manipulation of the scrip of KRBL on the part of the Noticee through SFL, JJB and DPS is revealed in his acting in tandem with other entities through the other broker which reveals the inherent intention of manipulating the said scrip.
28. Further, the trades as discussed earlier were in the nature of synchronized or reversal and circular trades with the same set of clients on both sides, trading through the same set of brokers. Furthermore, when a client reveals a clear and set pattern/behavior in a particular scrip, such as, execution of a large number of trades, on the same day, in the same scrip, consistently throughout the period and with the same set of brokers, then the same is

indicative of a concerted level of activity and a definite finding that there was an element of intent while executing the said deals, precipitated due to a mutual understanding, which aspect can be pointed out by any layman / an ordinary investor, leave apart the regulatory authorities. The acts of the entities speak of their intentions. In case an entity is alleged to have manipulated the market or distorted the market equilibrium in terms of the PFUTP Regulations and their acts are corroborated up to a certain extent by the investigation findings, then the underlying intention of the said entity is brought out. Furthermore, price manipulation does not only involve only manipulation in the prices of the scrip but also includes building up of volumes.

29. On a cumulative analysis of the facts mentioned above, it is clear that the modus operandi of the Noticee through the brokers, SFL, JJB and DPS to manipulate the trading in the scrip of KRBL in a concerted manner with other clients was effected in the following manner:

a) Order/execution time of the aforesaid trades' show that both buy and sale orders were given in identical time or within a gap of few seconds.

b) Both buy and sale orders of same quantity at the same price which led to creation of artificial volume resulting in price rise in the said scrip.

c) Clients are known to one another.

30. In order to establish the fraudulent nature of trades indulged in by the Noticee through SFL, JJB and DPS reference may also be made to the definition of fraud laid down in regulation 2 (1) (c) of the PFUTP Regulations, which reads as follows:

"2 (1)(c) "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss,"

31. Regulation 4 (1) of PFUTP Regulations prohibits a person from indulging in fraudulent or an unfair trade practice in securities. Regulation 4(2)(a) of the PFUTP Regulations 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 the PFUTP Regulations prohibits dealings in a security intended to operate as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gains. Regulation 4(2)(g) of the PFUTP Regulations prohibits from entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security. As detailed above, the acts of the Noticee clearly created false and misleading appearance of trading in the shares of KRBL and it did not act in a bonafide manner. The facts of the case highlight the Noticee's involvement, by execution of continuous synchronized and reversal trades in a substantial manner, in the manipulation of price/volume of the shares of KRBL which led to creation of artificial volumes and misleading appearance of trading in the said shares on account of collusive activities with the entities as discussed in the preceding paragraphs. As the transactions executed by the Noticee through SFL, JJB and DPS in KRBL were reversal, circular and synchronized in nature, there does not appear to be any genuine trading interest in the scrip. All these, resulted in violation of the provisions of regulations 4(1), 4(2) (a), (b) and (g) of the PFUTP Regulations.

32. In view of the foregoing, I am of the view that the facts of the present case clearly bring out an element of fraud and unfair trade practices indulged in by the Noticee trading through SFL, JJB and DPS. Therefore, the allegation

of violation of provisions of regulations 4(1), 4(2) (a), 4(2) (b) and 4(2) (g) of the PFUTP Regulations by the Noticee stands established.

33. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) held that “*once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow*”.
34. Thus, the aforesaid violations by the Noticee make it liable for penalty under Section 15HA of the SEBI Act, 1992 which read as follows:

“Penalty for fraudulent and unfair trade practices

15HA. 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.”

35. While determining the quantum of penalty under section 15HA, it is important to consider the factors stipulated in section 15J of the 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.”*

36. It is difficult, in cases of such nature, to quantify exactly the disproportionate gains or unfair advantage enjoyed by an entity and the consequent losses suffered by the investors. I have noted that the investigation report also does not dwell on the extent of specific gains made by the clients or the brokers. Suffice to state that keeping in mind the practices indulged in by the Noticee, gains per se were made by the Noticee in that he traded in the scrip of KRBL in a manner meant to create artificial volumes and liquidity which is an important criterion, apart from price, capable of misleading the investors while making an investment decision. In fact, liquidity/volumes in particular scrip raise the issue of 'demand' in the securities market. The greater the liquidity, the higher is the investors' attraction towards investing in that scrip. Hence, anyone could have been carried away by the unusual fluctuations in the volumes and been induced into investing in the said scrip. Besides, this kind of activity seriously affects the normal price discovery mechanism of the securities market. People who indulge in manipulative, fraudulent and deceptive transactions, or abet the carrying out of such transactions which are fraudulent and deceptive, should be suitably penalized for the said acts of omissions and commissions. Considering the continuous effort of the Noticee, along with aforesaid clients and brokers, in this aspect where the cross deals, circular trades and synchronized trades were carried out over a period of time, it can safely be surmised that the nature of default was also repetitive.
37. I find that the Noticee has failed to file any reply to the said SCN and has not refuted the charges. The Hon'ble Securities Appellate Tribunal in the matter of Classic Credit Ltd. ...v/s... SEBI [2007] 76 SCL 51 (SAT - MUM.) inter-alia held – *“the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show-cause notice were admitted by them”*. The order passed by Hon'ble SAT is relied upon in this case for guidance. Therefore, I presumed that the Noticee has admitted the charges alleged in the said SCN.

ORDER

38. After taking into consideration all the facts and circumstances of the case, I impose a penalty of Rs. 6,00,000 /- (Rupees six lakh only) under section 15HA of the SEBI Act on the Noticee which will be commensurate with the violations committed by him.
39. The Noticee shall pay the said amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Mr. Aliasgar Mithwani, Deputy General Manager, Investigations Department - 4, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
40. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: **July 21, 2010**

Place: **Mumbai**

PARAG BASU

ADJUDICATING OFFICER