

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. VSS/AO- 59/2008]**

---

**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**

**Against**

**Mr. Mitesh Pabari**

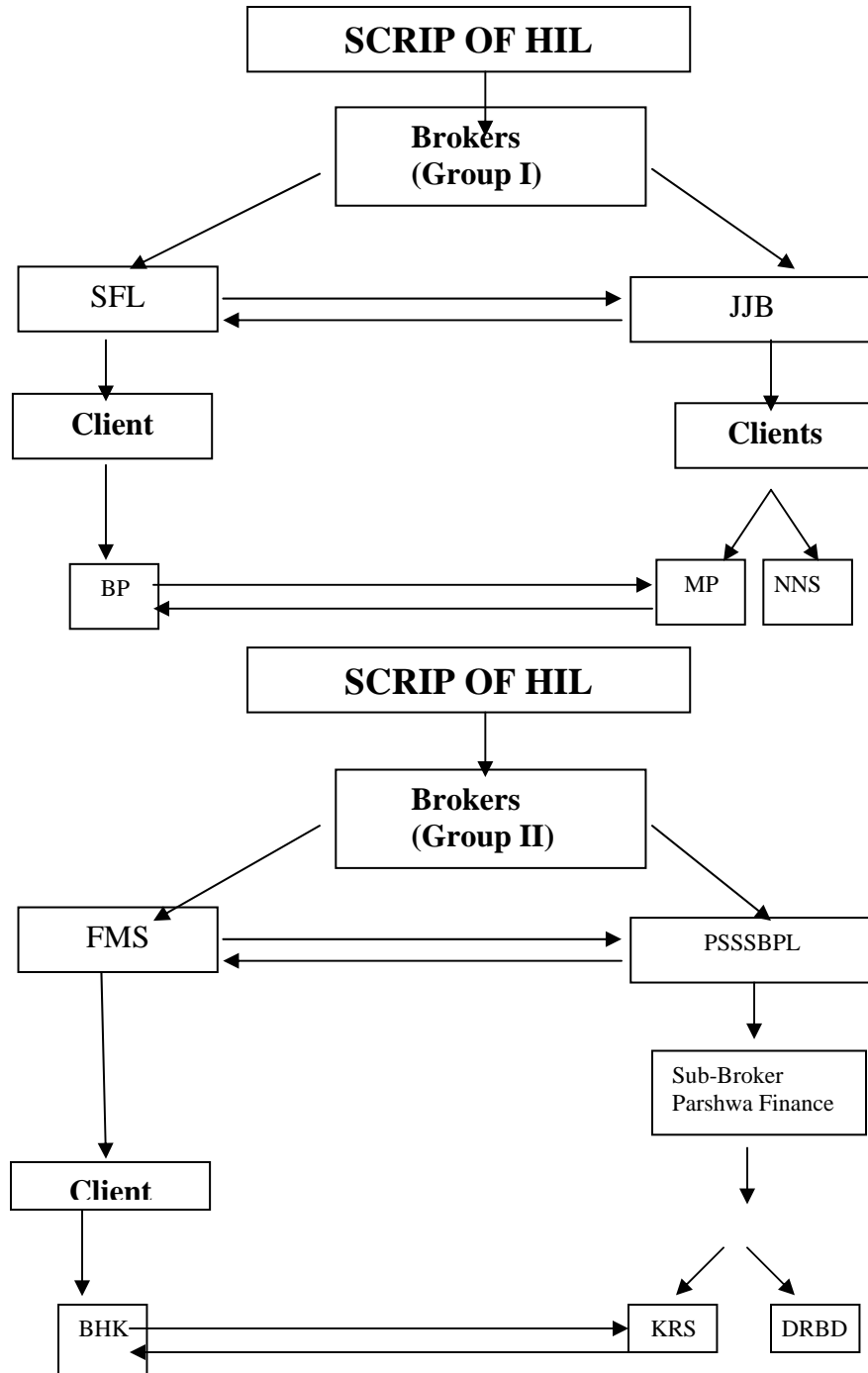
---

**FACTS OF THE CASE IN BRIEF**

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted investigation in respect of buying, selling and dealing in the shares of Havells India Ltd. (hereinafter referred to as “**HIL/Company**”) whose equity shares had witnessed a large variation in the price and volume during the period from July 16, 2003 to August 14, 2003 (hereinafter referred to as “**Investigation Period**”) at the National Stock Exchange of India Ltd. (hereinafter referred to as “**NSE**”) and Bombay Stock Exchange Ltd. (hereinafter referred to as ‘**BSE**’).
2. The role of clients and the brokers through whom they had traded in the scrip of HIL during the Investigation Period was examined by SEBI. It was alleged that through collusion, the clients and their brokers transacted in the shares of HIL in such a manner that led to

creation of artificial volumes in the scrip and was designed to create a false market leading to significant price movement in the scrip.

- The entities found to have been involved in the alleged manipulation and against whom action was initiated are as under:-



1.	HIL	Havells India Ltd.
2.	SFL	Sanchay Fincom Ltd.
3.	JJB	Jitendra J. Bhabhera
4.	BP	Bhavesh Pabari
5.	MP	Mitesh Pabari
6.	NNS	Naresh N. Shah
7.	FMS	FMS Securities Ltd.
8.	PSSSBPL	P. Suryakant Shares and Stock Brokers P. Ltd.
9.	BHK	Bela H. Kayastha
10.	PF	Parshwa Finance (Prop. Piyush Javeri)
11.	KRS	Ketan R. Shah
12.	DRBD	Digant Rajendra Bhai Desai

4. It was alleged that one of the entities, viz., Mitesh Pabari (hereinafter referred to as “**MP/Noticee/Client**”), who traded through Jitendra J. Bhabhera (hereinafter referred to as ‘**JJB/Broker**’) had violated the provisions of regulations 4(1), 4(2)(a), 4(2)(b) and 4(2)(g) of 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 sections 15HA of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”).

#### **APPOINTMENT OF ADJUDICATING OFFICER**

5. Mr. Piyooosh Gupta was appointed as Adjudicating Officer vide order dated December 14, 2005 under section 15 I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as

'Rules') to inquire into and adjudge the aforesaid alleged violations committed by MP.

6. Consequent upon the transfer of Mr. Piyoosh Gupta, the undersigned was appointed as the Adjudicating Officer vide order dated November 19, 2007.

### **SHOW CAUSE NOTICE, HEARING AND REPLY**

7. Show Cause Notice No. EAD/EAD-5/PG/63988/2006 dated March 31, 2006 (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 against the Noticee and penalty be not imposed on the Noticee under section 15HA of SEBI Act for the alleged violations specified in the said SCN.
8. The SCN was delivered to the Noticee by registered post as per signed acknowledgement card received but the Noticee did not reply. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, an opportunity of hearing was granted to the Noticee on July 11, 2008. The hearing notice dated June 24, 2008 was delivered to the entity by hand (as per signed acknowledgement card received) However, neither he nor any of his authorized representative appeared for the hearing. In the interest of natural justice, one more opportunity of hearing was granted to the Noticee on November 18, 2008 vide Notice dated November 05, 2008. This hearing Notice was also delivered to the Noticee but no one appeared for the hearing.
9. I am convinced that ample opportunity has been given to the Noticee to put forward his defense and explain his case. Despite being given ample opportunity, the Noticee has failed to avail the opportunity of

filing reply and appearing for personal hearing. In view of this, I am compelled to proceed with the matter *ex-parte* according to rule 4(7) of the Rules and decide this case on the basis of materials available on record.

## **CONSIDERATION OF ISSUES AND FINDINGS**

10. The issues that arise for consideration in the present case are :

- a) Whether the Noticee has violated the provisions of regulations 4(1), 4(2) (a), (b) and (g) of PFUTP Regulations?
- b) Does the violation, if any, on the part of the Noticee attract monetary penalty under section 15 HA of 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 SEBI Act?

11. Before moving forward, it will be appropriate to refer to the relevant provisions of PFUTP Regulations, which reads as under:

### **PFUTP Regulations**

#### **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.*

(h) ...

(i) ...

(j) ...

(k) ...

(l) ...

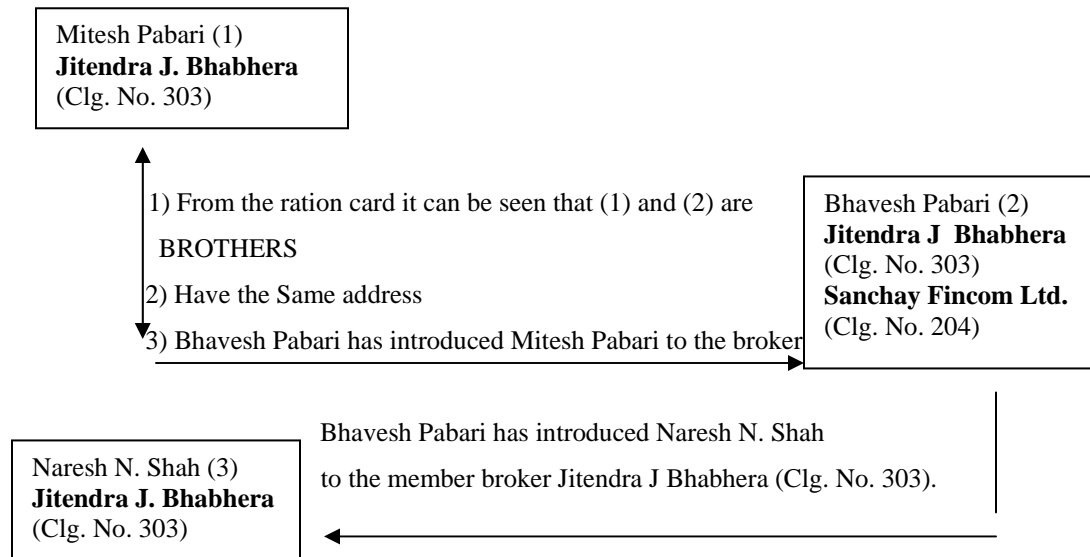
(m) ...

(n) ...;

12. Upon careful perusal of the documents available on record, I find that the allegations against the Noticee have been made in the SCN based on the following:-

(a) 352 structured orders were placed between Mitesh Pabari, Naresh N. Shah and Bhavesh Pabari. Mitesh Pabari and Naresh N. Shah were trading through JJB, Broker - BSE (SEBI Regn. No. INB 01549616 – Clg. No. 303) and Bhavesh Pabari was trading through Sanchay Fincom Ltd. (SFL), Broker – BSE. (SEBI Regn. No. INB 011139632 – Clg. No. 204). These clients were related / connected to one another as Mitesh Pabari and Bhavesh Pabari are brothers and the account of Naresh N. Shah with Jitendra S. Bhabhera was introduced by Bhavesh Pabari. The relationship details are as under:

### Details of relationship between clients



(b) The trades had taken place on 11 days out of 21 days during the period of investigation (16<sup>th</sup> July 2003 to 14<sup>th</sup> August 2003) and on all the 11 days synchronized orders for initial trades and thereafter reversal / circular trades were entered by these clients through their brokers comprising of 2,40,381 shares which accounted for 31.95 % of the total traded quantity (7,52,291 shares) during the period of investigation and 67.63% of circular traded quantity (3,55,418 shares).

(c) In almost all the 2872 trades, buy and sell orders were placed within seconds (0 to 3 sec) of each other. The order prices and quantities were also matching with those of the counterparty broker between same set of clients in most of the trades. Considering such a large number of transactions over many days, it cannot be a co-incidence. Such type of transactions cannot be genuine investment transactions. These trades accounted for about 20 – 60% of the day's volume.

(d) Noticee is the brother of Mitesh Pabari who was the counterparty client trading through Sanchay Fincom Ltd. Sanchay Fincom Ltd. has a subsidiary Sanchay Finvest Ltd. which is registered as NSE broker. From the member directory on NSE website it was observed that Mitesh Pabari was the CEO of Sanchay Finvest Ltd.

(e) The pattern of trading clearly points out that the transactions were carried out with the intention that the orders of particular client and broker match with each other and there was a prior arrangement with respect to these large number of transactions. The transactions resulted in creation of artificial volume. Further, the pattern of trading indicates several instances when the time difference between buy and sell orders was nil. No unknown persons can trade continuously with each other by putting orders in such pattern contributing significantly to total volume in the market. This shows that the clients who were related / connected to each other were trading with each other through synchronized order placement with the knowledge of the brokers. Thus, the increase in the trading volume in the scrip can be attributed to the trades done by Bhavesh Pabari through Sanchay Fincom Ltd. and Mitesh Pabari and Naresh N. Shah through JJB. Also such type of transactions which were reversed on the same day and which contributed to the major portion of market volume, did impact price movement and volatility in stock markets.

13. I find that the trades executed by the entities referred to above in Group I are as under:



Member Code	Member Broker	Sub-Broker	Major Ultimate Client	Gross Purchase		Gross Sales	
				Shares	%	Shares	%
303	Shri Jitendra J. Bhabhera	N.A.	Naresh N. Shah	125,441	16.67	125,441	16.67
			Mitesh Pabari				
204	Sanchay Fincom Ltd	N.A.	Bhavesh Pabari	120,800	16.06	120,800	16.06

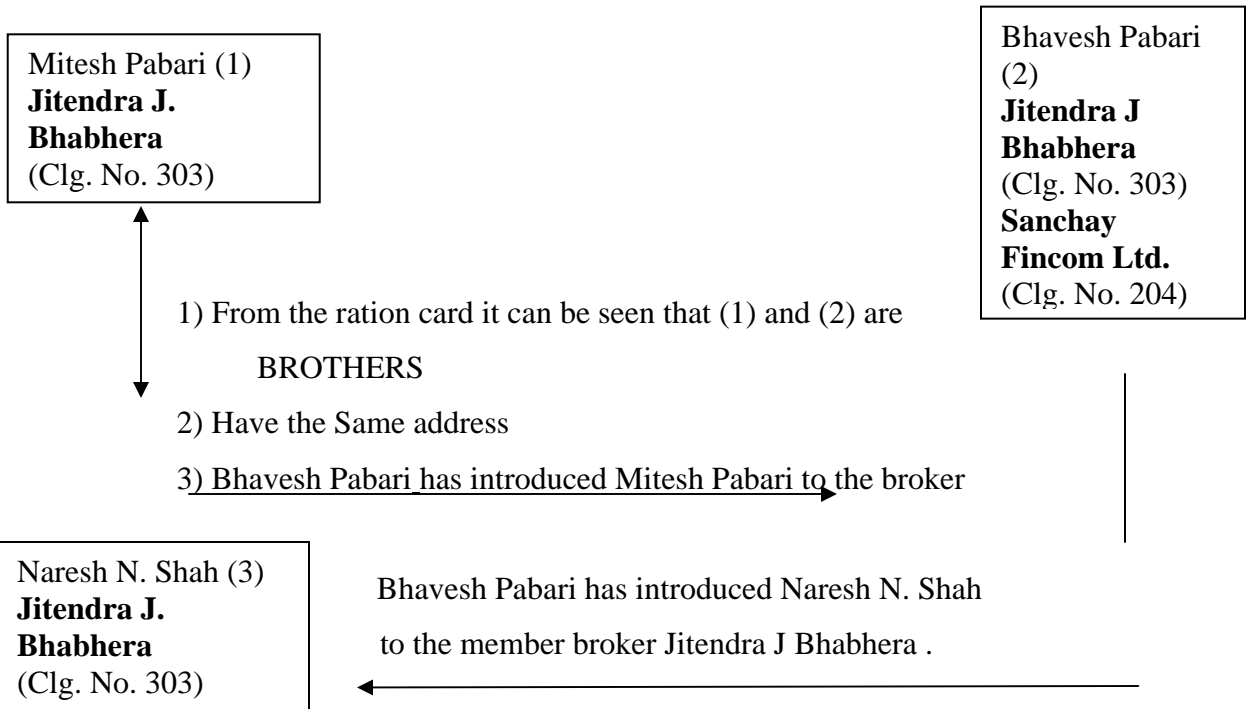
14. Upon analysis of the trade/order log of the transactions carried out during the period of investigation, I find that the quantity of trades that can be classified as 'Circular Trades' was 3,55,418 shares i.e. 47.24% of the total market traded quantity i.e. 7,52,291 shares. Out of this, the brokers and their clients referred to as Group I, were found to be involved into reversal/ circular/artificial/synchronized trades to the extent of 2,40,381 shares, comprising of 31.95% of total market traded quantity. It is further observed that out of total 21 days during the entire investigation period there was reversal/circular / artificial trading for 11 days by the clients and their brokers referred to as Group I. All these trades were of synchronized in nature. The details in this regard are as under:

Period	Bought Qty	Bought by Client (Broker)	Bought From Client (Broker)	Sold Qty	Sold by Client (Broker)	Sold To Client (Broker)
--------	------------	---------------------------	-----------------------------	----------	-------------------------	-------------------------

31-Jul-03 to 14-Aug-03	120,035	<b>Bhavesh Pabari</b> (Sanchay Fincom Ltd.) (204)	<b>Mitesh Pabari &amp; Naresh N. Shah</b> (Jitendra J. Bhabhera) (303)	120,346	<b>Bhavesh Pabari</b> (Sanchay Fincom Ltd) (204)	<b>Mitesh Pabari &amp; Naresh N. Shah</b> (Jitendra J Bhabhera) (303)
------------------------	---------	--	---	---------	---	--

15. The details of the trades executed by the Noticee in the scrip of HIL during the investigation period have been forwarded to the Noticee as annexure to the SCN. The details of the trades' reveal that the buy and sell orders were entered in by the Noticee through the terminal of JJB at the same price and quantity within a gap of a few seconds. A mere look at the said annexure which contains the details of a large number of trades makes it clear that the trades were circular trades, matched trades, reverse trades and synchronized trades and they are fictitious trades meant to increase volumes on the screen of the trading system as there is no change of beneficial ownership in the traded shares.

16. The clients of group I comprised of Bhavesh Pabari, trading through the member broker SFL and Mitesh Pabari & Naresh N. Shah trading through the member broker JJB. They were related / connected to one another as illustrated below :



17. The pattern of trading clearly points out that the transactions were carried out with the intention that the orders of particular client and broker match with each other and there was a prior arrangement with respect to these large number of transactions. The transactions resulted in creation of artificial volume. Further, the pattern of trading indicates several instances when the time difference between buy and sell orders was nil. No unknown persons can trade continuously with each other by putting orders in such pattern contributing significantly to total volume in the market. This shows that the clients who were related / connected to each other were trading with each other through synchronized order placement with the knowledge of the brokers. Thus, the increase in the trading volume in the security can be attributed to the trades done by the Noticee and other clients and brokers of Group I. Also such type of transactions which were reversed on the same day and which contribute to the major portion of market volume, do impact price movement and volatility in stock

markets. Others in the market get the impression that these are genuine prices of the scrip whereas this is not the fact.

18. The following findings establish the link between the Noticee, Bhavesh Pabari, Naresh N. Shah and their brokers:

- i. Bhavesh Pabari, the client of the SFL and the Noticee, client of the JJB are brothers.
- ii. The Noticee and Naresh N. Shah were introduced to JJB by Bhavesh Pabari.
- iii. Bhavesh Pabari, the client of SFL and Noticee, the client of the JJB lived together at the same address.
- iv. SFL has a subsidiary, viz., Sanchay Finvest Ltd., which is registered as a broker with NSE. The Noticee was the CEO of Sanchay Finvest Ltd.

19. The analysis of the trading data of these entities further reveals that,

**Between Mitesh Pabari and Bhavesh Pabari**

- (i) The client Mitesh Pabari and Bhavesh Pabari have traded for 5 days out of 21 days and had executed reversal/ circular trades on all the 5 days.
- (ii) A total of 966 trades for 60,331 shares were executed between Mitesh Pabari and Bhavesh Pabari accounting for more than 8.01% of the total quantity traded during the Investigation Period and 25.1% of the total circular traded quantity of Group I.

- (iii) Out of 114 synchronized orders placed by Mitesh Pabari and Bhavesh Pabari 33 orders were such that the time difference between buy and sell order was 0 second. This constitutes 24.94 % of the total orders placed by them. Further 56 orders were so placed that the time difference between buy and sell order was 1 second, 8 orders were with time difference of 2 seconds, 9 orders were with time difference of 3 seconds. Hence, 92.98% of the orders placed by these two clients were synchronized in the nature of reversal / circular trades where the quantity and the price of buy and sell orders matched and the time difference between the sell and buy orders were less than or equal to 3 seconds.

**Between Naresh N Shah and Bhavesh Pabari**

- (iv) The client Naresh N Shah and Bhavesh Pabari have traded on 9 days out of 21 days and have executed circular / reversal trades on all the 9 days.
- (v) A total of 1,876 trades comprising of 1,77,550 shares were executed between Naresh N. Shah and Bhavesh Pabari accounting for more than 23.6% of the total quantity traded during the period of investigation and 73.9% of the total circular traded quantity of Group I.
- (vi) Out of 217 synchronized orders placed by Naresh N Shah and Bhavesh Pabari, 89 orders were such that the time difference between buy and sell order was 0 second. This constitutes 41.01 % of the total orders placed by them. Further 82 orders were so placed that the time difference between buy and sell order was 1

second, 32 orders were with time difference of 2 seconds and 14 orders were with time difference of 3 seconds. Hence, 100 % of the orders placed by these two clients were synchronized in the nature of reversal / circular trades where the quantity and the price of the orders matched and the time difference between the sell and buy orders were less than or equal to 3 seconds.

**Between Bhavesh Pabari, Mitesh Pabari and Naresh N Shah**

- (vii) The clients Bhavesh Pabari, Mitesh Pabari and Naresh N. Shah have traded for total 11 days out of 21 days and have executed reversal trades on all the 11 days.
- (viii) A total of 2842 trades comprising of 237881 shares were executed by the above clients accounting for about 31.62 % of the total quantity traded during the investigation period and 98.96% of the total circular traded quantity executed by Group I.
- (ix) On, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, and 13<sup>th</sup> August, 2003 the Noticee and Naresh N. Shah trading through JJB and Bhavesh Pabari trading through SFL have entered into reversal trade transactions.
- (x) The circular / fictitious trades of above mentioned clients viz. Mitesh Pabari, Bhavesh Pabari and Naresh N. Shah had contributed for 20-50% of the daily trading volume on the days the price variation was observed,.
- (xi) The above mentioned clients and the brokers bought and sold the shares among themselves by squaring off the deals often the same day and through the same broker(s) in a circular manner.

### **Between JJB and SFL**

- (xii) JJB and SFL have traded for 11 days out of 21 days during the period of investigation and have executed reversal / circular trade on all the 11 days.
  - (xiii) A total of 352 orders were executed between them.
  - (xiv) 2,872 synchronized reversal/ circular trades were entered by these two brokers during the period 31<sup>st</sup> July 2003 to 14<sup>th</sup> August 2003 accounting for 2,40,381 shares which accounts for 31.95 % of the total traded quantity during the period of investigation and 67.63% of circular traded quantity. These volumes on most of the days accounted for about 20-60% of the day volume.
20. It is evident from the above that the Noticee and other clients of Group I, 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 synchronization of trades/matched orders/structured deals/circular 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..
21. 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."*

22. 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."*

23. Keeping in mind the dicta of the SAT as reproduced above, I see no reason to take a different view in the present case.
24. 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 and with proper delivery versus payment system. 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.

25. This is what has transpired in the present case. Although the matching of these trades has been attributed to coincidence, 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 HIL in a way that was not the market determined volumes, possibly to induce other persons to invest in the said scrip.
26. 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. The transactions as pointed out in the table/s earlier and

spread over a period of time are definitely done with some inbuilt component of 'intent' involved. 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 HIL on the part of the Noticee through JJB is revealed in his acting in tandem with other entities through the other broker which reveals the inherent intention of manipulating the said scrip.

27. Further, the trades as discussed earlier were in the nature of reversal of trades/ matched deals 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. This is evident from the finding that the Noticee and Naresh N Shah had executed 2,40,882 shares (both buy and sell), out of which 2,40,381 shares were found to be structured and synchronized deals.

28. On a cumulative analysis of the facts mentioned above, it is clear that the modus operandi of the Noticee through the JJB to manipulate the trading in the scrip of HIL in a concerted manner 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 well known to one another.

29. In order to establish the fraudulent nature of trades indulged in by the Noticee through JJB reference may also be made to the definition of fraud laid down in regulation 2 (1) (c) of the PFUTP, 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, ... ..”*

30. Regulation 4(2)(a) of PFUTP Regulations, inter alia, 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 Regulations, inter alia, 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 PFUTP Regulations prohibits 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 HIL and also that it did not act in a bonafide manner. The facts of the case highlight the Noticee's involvement, by executing continuous cross deals, circular trades and synchronized trades in a substantial manner, in the manipulation of price/volume of the shares of HIL 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 in HIL were synchronized, there does not appear to be any genuine trading interest in the scrip. All these, resulted in violation of the provisions of regulations 4(2)(a), 4(2)(b) and 4(2)(g) of the PFUTP Regulations.

31. 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 JJB. Therefore, the allegation of violation of provisions of regulations 4(2) (a), 4(2) (b) and 4(2) (g) of PFUTP Regulations by the Noticee stands established.
32. 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*”.
33. Thus, the aforesaid violations by the Noticee make it liable for penalty under Section 15HA of 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.”*

34. While determining the quantum of penalty under section 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.”*

35. 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 and his broker, gains per se were made by the Noticee and his broker in that they traded in the scrip of HIL 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.

### **ORDER**

36. After taking into consideration all the facts and circumstances of the case, I impose a penalty of Rs.3,00,000/- (Rupees three lakh only) under section 15HA on the Noticee which will be commensurate with the violation/s committed by him.
37. 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 Ms. Barnali Mukherjee, D.G.M., Investigations Department, SEBI, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
38. 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: **December 03, 2008**

Place: **Mumbai**

**V.S.SUNDARESAN**  
**ADJUDICATING OFFICER**