

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. - SRP/RK/AO: 176/2011]

UNDER SECTION 15 I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995 AND UNDER SECTION 23 I OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF THE SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005

In respect of:

Mr. Uves Sareshwala

(PAN: AOFPS5856M)

In the matter of Parsoli Corporation Limited

BACKGROUND IN BRIEF

1. The Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted investigations into the alleged irregularities in the affairs, trading and dealings in the shares of M/s. Parsoli Corporation Limited (hereinafter referred to as '**Company/PCL**') whose shares witnessed abnormal increase in the price and volume traded during the period March 11, 2005 to July 18, 2005 at the Bombay Stock Exchange Limited (hereinafter referred to as '**BSE**').
2. The investigations, prima facie, revealed that (i) Mr. Zafar Sareshwala, (ii) Mr. Uves Sareshwala (hereinafter referred to as '**Noticee**'), (iii) Mohamedyunus Mohammedhabib Sareshwala, (iv) Saleha Yunus Sareshwala, (v) Taskeen U Sareshwala, (vi) Talha Vajiha Sareshwala, (vii) Juveria Puthawala and (viii) Aaliya Sareshwala, who were the promoters and/or directors of the Company during the relevant period, had made misleading corporate announcements and furnished untrue information to the stock exchange. Further, they transferred their stake in the Company in off-market deals to their connected/associated entities and acting in connivance with them indulged into manipulative and unfair trade

practices to create artificial trading volumes in the scrip and to manipulate its price and ultimately to off-load their stake in the market at such manipulated prices. Therefore, it is alleged that the Noticee, acting in connivance with promoters/directors and other associated/connected entities has violated the provisions of regulations 3, 4(1), 4(2)(e) and 4(2)(f) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**') which, if established, makes him liable for penalty under section 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**').

3. The investigations also revealed that the alleged off-market transfer of shares of PCL by the Noticee and consequent change in shareholding was also required to be disclosed to the Company under regulation 13(4) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**') however, the Noticee had not made the required disclosures under the PIT Regulations. It is also alleged that during the course of the investigations, the Noticee was summoned by the Investigating Authority of SEBI to furnish certain information/documents under the provisions of section 11C (2) and 11 C (3) of the SEBI Act which he allegedly failed to comply with. The alleged failure on the part of the Noticee to comply with the aforesaid provisions of the PIT Regulations and the SEBI Act, if established, makes him liable for penalty under section 15A of the SEBI Act.
4. It was also observed during the investigations that the alleged off-market transactions entered into by the Noticee in the shares of PCL were not in the nature of 'spot delivery contracts' as defined under section 2(i) of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as '**SC(R) Act**'), therefore, it is also alleged that the Noticee has violated the provisions of sections 13 and 16 read with section 18 of the SC(R) Act which, if established, makes him liable for penalty under section 23H of the SC(R) Act.

APPOINTMENT OF ADJUDICATING OFFICER

5. Shri V. S. Sundaresan was appointed as Adjudicating Officer 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 to inquire into and adjudge under section 15A(a), 15A(b) and 15HA of the SEBI Act, the alleged violation of the provisions of the SEBI Act, the PIT Regulations and the PFUTP Regulations and under section 23I of the SC(R) Act read with rule 3 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 to inquire into and adjudge under section 23H of the SC(R) Act the alleged violation of the provisions of the SC(R) Act. Consequent to the

transfer of Shri V. S. Sundaresan, the undersigned has been appointed as Adjudicating Officer.

SHOW CAUSE NOTICE, REPLY AND HEARING

6. Show Cause Notice No. EAD-1/SRP/RK/189652/2010 dated January 5, 2010 (hereinafter referred to as '**SCN**') was issued to the Noticee to show cause as to why an inquiry be not held against him and penalty be not imposed under –
 - a) section 15A (a), 15A (b) and 15HA of the SEBI Act for the aforesaid alleged violations of the provisions of the SEBI Act, the PIT Regulations and the PFUTP Regulations; and/or
 - b) section 23H of the SC(R) Act for the alleged violation of the provisions of the SC(R) Act.

7. The Noticee replied to the SCN vide letter dated January 21, 2010. The summary of the reply of the Noticee is as under –
 - *During the enquiry into the matter by BSE the Company had informed BSE vide letter dated April 26, 2006 that the promoters had not sold the shares but pledged those for availing financial assistance.*
 - *Vide letter dated May 2, 2006, PCL forwarded copies of various share pledge agreements entered into between the promoters and pledgees and vide its letter dated May 10, 2006 informed BSE about the circumstances under which the promoters of the Company had to pledge their shares to raise funds from private financiers. (Copy of such letters was enclosed alongwith the reply).*
 - *To survive in the business, the promoters of the Company pledged their shares with private financiers for a sum of ₹ 82 lakh. The promoters had to agree with all the terms and conditions of the private financiers, accordingly, the promoters handed over signed off-market delivery instruction slips without mentioning transferee's name to Kishore Janani and Manish Ajmera in respect of the pledged shares. It was agreed that the said shares would be given back to the pledgors when the loan would be repaid. Thus, the Noticee has submitted that the promoters continued to be the owners of the said shares as the transaction was that of pledge and therefore, it was not reflected in the shareholding pattern of the Company.*
 - *Kishore Janani and Manish Ajmera later dishonestly transferred these shares to other entities about which the Company or promoters/directors were not aware.*

- *In the board meeting held on November 18, 2005, the board of directors of the Company decided to reconsider the issue of dividend payout and decided to use the resources of the Company towards acquiring membership of BSE and in becoming a Depository Participant with CDSL. The Noticee has stated that this decision was duly communicated to BSE.*
- *The Notice has submitted that the promoters had not transferred 8,86,000 shares to the entities in group A as alleged in the SCN and that they are not related to the said group of six entities.*
- *The 1,27,4000 shares were lent to the Noticee by his friends and relatives without any financial consideration.*
- *The cheque dated May 10, 2005 for ₹ 40 lakh was deposited in the first week of June 2005 at the instruction of M/s. Amin Distributors. The Noticee has denied the allegation that he has participated in the alleged game plan with the promoters/directors to off load shares in the guise of pledge.*
- *With regard to failure to make disclosures under PIT Regulations, the Noticee has stated that the shares were pledged with Amin Distributors, Prathmesh Investments and trading Company Private Limited, Manish Ajmera, Kishore Janani and Yatin Shah. The promoters had handed over signed off market transfer slips without mentioning any name to Kishore Janani and Manish Ajmera who dishonestly transferred these shares without notice or consent.*
- *With regard to the allegation of failure to furnish documents/information to the investigating authority the Noticee has stated that he had furnished all the documents/information which was available with him.*

In support of his above submissions the Notice has forwarded certain documents vide letter dated January 27, 2010.

8. In the meantime, while the adjudication proceedings were in progress, the Noticee, vide application dated January 25, 2010 applied to SEBI for settlement of the matter through consent proceedings. However, his consent application was subsequently rejected as the consent terms proposed by him were not acceptable to the concerned authority and the Noticee was accordingly informed by SEBI about the said rejection vide letter dated June 29, 2010.
9. Thereafter, in order to conduct inquiry into the matter the undersigned granted an opportunity of hearing to the Noticee on October 28, 2010. However, vide letter dated October 25, 2010

the Noticee requested to postpone the date of hearing by at least seven days. Accordingly, another opportunity of hearing was granted to the Noticee on November 16, 2010 vide notice dated November 2, 2010. The Notice was delivered to the Noticee but he did not turn up for the hearing on the said date. In the interest of natural justice one more opportunity of hearing was granted to the Noticee on January 13, 2011 vide notice dated December 23, 2010. This notice was also delivered to the Noticee but no one appeared for the hearing. The Noticee neither responded to the notice nor has furnished any reason or grounds for his non appearance. I am of the view that sufficient opportunities have already been given to the Noticee to make his submissions and to appear before me for the personal hearing. While he has filed his written reply, he has chosen not to avail of the opportunity of hearing. Therefore, in the facts and circumstances of the case, I am compelled to proceed with the matter on the basis of documents available on record.

CONSIDERATION OF ISSUES AND FINDINGS

10. I have carefully perused the details of allegations against the Noticee, the reply filed by him and the documents/evidences available on record. The issues that arise for consideration in the present case are as under:
 - a) Whether the Noticee, acting in connivance with others, have violated/contravened the provisions of regulation 3, 4(1), 4(2)(e) and 4(2)(f) of PFUTP Regulations?
 - b) Whether the Noticee was required to make disclosure to PCL under regulation 13(4) of the PIT Regulations and if so, whether he has failed to do so?
 - c) Whether the Noticee has failed to comply with the summons issued by the investigating authority and thereby, violated the provisions of sections 11C (2) and 11C (3) of the SEBI Act?
 - d) Whether the Noticee has indulged into off-market transactions in the shares of PCL, and if so, whether it were not in the nature of spot delivery contract and therefore, in violation of the provisions of sections 13 and 16 read with section 18 of the SC(R) Act?

11. Before moving forward, it would be appropriate to succinctly state the relevant facts of the case. SEBI had conducted investigations into the buying, selling and dealings in the scrip of PCL, whose shares had witnessed abnormal increase in the price and the volume traded on BSE during the period March 11, 2005 to July 18, 2005. Traded volume went up from 1, 93,606 shares at the beginning of the period of investigation to 7, 52,616 shares towards its end. It was found that price of the scrip opened at ₹ 14.51 on March 11, 2005, touched its

period low of ₹ 12.30 on May 2, 2005 and thereafter, touched period high of ₹ 36.50 on July 18, 2005. The price rise in the scrip was to the extent of 151% in 91 trading days.

12. Mr. Zafar Sareshwala (Managing Director), Mr. Uves Sareshwala (Joint Managing Director), Mohamedyunus Mohammedhabib Sareshwala, Saleha Yunus Sareshwala, Taskeen U Sareshwala, Talha Vajiha Sareshwala, Juveria Puthawala, Aaliya Sareshwala were the promoters of the Company during the relevant period and the shareholding pattern as reported to the BSE for the quarters ended on December 2004, March 2005 and June 2005 is as under:

	Dec 31, 2004	March 31, 2005	June 30, 2005
Promoter's Holding			
Indian Promoters	10823500 (80.09%)	10823500 (80.09%)	10823500 (80.09%)
Foreign Promoters	-		
Persons acting in concert	1013705 (7.50%)	1013705 (7.50%)	1013705 (7.50%)
Sub total	11837205 (87.59%)	11837205 (87.59%)	11837205 (87.59%)
Non Promoter's holding	-		
Others			
PCBs	48650 (0.36%)	685741 (5.07%)	710217 (5.26%)
Indian Public	1504845 (11.13%)	947854 (7.01%)	946853 (7%)
NRIs/OCBs	124200 (0.92%)	44100 (0.33%)	20625 (12.41%)
Sub-Total	1677695 (12.41%)	1677695 (12.41%)	1677695 (12.41%)
Grand total	13514900 (100%)	13514900 (100%)	13514900 (100%)

13. However, it was observed during the investigations that there was change in actual shareholding of the promoter group entities during the aforesaid quarters and it was not reflected in the shareholding pattern reported to the exchange. Further, it was also observed that the Company made a corporate announcement regarding recommendation of the board of directors (in meeting held on July 4, 2005) to declare dividend at the rate of 10% per share to the shareholders of the Company. As per the Noticee the said decision was subsequently changed and no dividend was disbursed to the shareholders. The details regarding the alleged off-market transfer of shares of PCL by the said promoter group during the quarters ended on December 31, 2004, March 31, 2005 and June 30, 2005 are as under:

Name of the promoters/ directors	No of shares held as on December 31, 2004	No of shares transferred via off market deal	Date of transfer
Uves Yunus Sareshwala	1,84,800	3,12,000	1,00,000 shares on 14/03/05; 50,000 shares on 15/03/05; 31,000 shares on 17/03/05;

			3,000 shares on 09/06/05; 80,000 shares on 30/6/05; 10,000 shares on 16/06/05 and 38,000 shares on 17/06/05.
Juveria Puthawala	75,100	82,100	57,100 shares on 21/05/05 and 25,000 shares on 08/06/05.
Saleha Yunus Sareshwala	1,48,200	1,09,200	90,000 shares on 21/03/05; 1,000 shares on 09/06/05; 500 shares on 18/06/05; 10,000 shares on 04/07/05; 7,700 shares on 11/07/05.
Aalia Sareswala	72,900	72,000	17/05/05
Taskeen Uves Sareshwala	72,100	72,100	10,000 shares on 11/03/05; 19,000 shares on 17/03/05 and 43,100 shares on 21/03/05.
Umer Uves Sareshwala (minor) S/o Uves Sareshwala	62,200	62,000	10,000 shares on 11/03/05; 50,000 shares on 18/03/05 and 2,000 shares on 06/09/05.
Asma Uves Sareshwala (minor) D/o Uves Sareshwala	59,900	49,900	39,900 shares on 21/03/05 and 10,000 shares on 21/05/05.
Ahmed Zafar Sareshwala (minor) S/o Zafar Sareshwala	44,000	44,000	21/03/05.
Khadija Zafar Sareshwala (minor) D/o Zafar Sareshwala	39,700	39,700	21/03/05.
Fatema Uves Sareshwala (minor) D/o Uves Sareshwala	20,200	20,200	10,000 shares on 11/03/05 and 10,200 shares on 21/03/05.
Sumaiya Talha Sareshwala (minor) D/o Talha Sareshwala	48,000	17,100	9,000 shares on 25/04/05; 600 shares on 05/05/05; 6,000 shares on 02/06/05; 1,000 shares on 09/06/05 and 500 shares on 18/06/05.
Qudsiya Talha Sareshwala (minor) D/o Talha Sareshwala	53,100	12,500	7,500 shares on 12/05/05; 4,000 shares on 02/06/05 and 1,000 shares on 18/06/05.

14. The Noticee was shown holding 1,84,800 shares at the end of the quarters ended on December 31, 2004, March 31, 2005 and June 30, 2005 however, it is observed from his demat account statement that 1,27,400 shares were dematerialized by him on June 11, 2005 and he transferred 3,12,000 shares in off-market deals during the period March 14, 2005 to June 17, 2005 and had a closing balance of 200 shares on June 17, 2005.

15. The investigations has found that the total off-market deals by the promoter/ directors, including the Noticee, were for 10,44,350 shares out of which the net transfer by the promoters/directors were of 9,35,650 shares during the period of investigation. It is noted that promoters/directors (viz. Aaliya Sareshwala, Ahmed Z Sareshwala (minor) S/o. Zafar Sareshwala, Asma Sareshwala (minor) D/o. Uves Sareshwala, Fatema Sareshwala (minor) D/o. Uves Sareshwala, Juveria Puthawala, Khadija Sareshwala (minor) D/o. Zafar Sareshwala, Mohammedyunus M Sareshwala, Saleha Y Sareshwala, Vajiha Talha Sareshwala, Sumaiya Sareshwala (minor) D/o. Vajiha Talha Sareshwala, Taskeen U Sareshwala, Umer Sareshwala (minor) S/o. Uves Sareshwala and Uves Sareshwala) have transferred in off market deals 8,86,000 shares to six related/connected entities during the period March 11, 2005 to July 18, 2005. These six entities (referred to in the SCN as Group A entities) are (i) Sayyed Mustafa (75,000 shares), (ii) Manish Ajmera (3,00,000 shares), (iii) Raju G. Shah (80,000 shares), (iv) Girdhar Vagadia (2,50,000 shares), (v) Mohammedyunus Huseinmiya Lokhandwala (38,000 shares) and (vi) Prathmesh Investments and Trading Private Limited / Dharmesh Seth (1,43,000 shares). The investigations has also found that out of the 8,86,000 shares transferred by the promoters/directors; 7,36,615 shares were in physical mode and dematerialized by them and as per information received from Pinnacle Share Registry Pvt. Ltd. (RTA to the Company), 6,63,600 shares were transferred from other shareholders to the promoters in off market deals.
16. Further, the investigations also revealed that the above said six entities are directly or indirectly associated with each other and/or with the promoters/directors of PCL. Details in this regard were provided to the Noticee in Annexure X of the SCN. Mr. Dharmesh Seth and Mr. Kishore Janaji are cousins and the directors of Prathmesh Investment and Trading Private Limited (hereinafter referred to as “**PITPL**”) with which the Noticee and other promoter/directors of the Company have dealt in connection with the transactions in the shares of PCL during the period of investigation. Manish Ajmera was a sub-broker with Kishore Janani when Mr. Janani was a registered stock broker. Yatin Shah (Proprietor of M/s. Girigopal Investments) and Dharmesh Sheth were colleagues at Shriram Investment Services Limited. Sayyed Mustafa was an employee of Yatin Shah and Raju G Shah is cousin of Yatin Shah. Sayyed Mustafa and Raju G Shah have received shares from the promoters of PCL in off-market deals. Mohammed Yunus Huseinmiya Lokhandwala and Giridhar Vagadia have also received shares of PCL from the promoters/ directors of PCL without paying any consideration.

17. In view of the above said misleading information to exchange and the circumstances relating to off-market transfer of shares of PCL, it was alleged that the promoters/directors of the Company had acted in connivance with each other and with other connected/ associated entities as mentioned above and sold their stake in PCL in off-market deals to them and acting in connivance with each other and the said six entities created artificial trading volume in the scrip in the Exchange in order to manipulate its price and ultimately to off load their shareholding in the Company in the market at such manipulated prices. It is also alleged that the Noticee, acting in connivance with other promoters/directors of PCL, caused to be reported untrue information to the exchange. Therefore, it has been alleged that the Noticee along with other promoters/directors has violated the provisions of regulations 3, 4(1), 4(2)(e) and 4(2)(f) of the PFUTP Regulations.
18. In his reply the Noticee has contended that the shares were not transferred in off-market deals by the promoters to the aforesaid entities as alleged but it was pledged with M/s. Amin Distributors and Prathmesh Investment and Trading Private Limited (PITPL) in lieu of a consideration of ₹ 82 lakh and the promoters handed over signed off-market delivery instruction slips without mentioning the name of the transferee to Kishore Janani and Manish Ajmera in respect of the pledged shares. Kishore Janani and Manish Ajmera later dishonestly transferred these shares to other entities about which the Company or promoters/directors were not aware. In support of his contention that the shares were pledged, the Noticee has relied upon the copy of letters written by Amin Distributors and PITPL to promoters of PCL.
19. In this regard it is observed that during the investigations it was found on the basis of information received from Pinnacle Share Registry Pvt. Ltd (RTA to the Company) that the promoters/directors received 7,36,615 shares of PCL in physical mode from other shareholders and they dematerialized it. The Noticee and Zafar Sareshwals (MD of PCL) in their statement recorded on June 03, 2009 have stated (in response to Q. 9) that:
- “All off-market transfers were in the demat mode. We have not made any off-market transfers or pledge in physical form during this period.”*
20. Thus, the Noticee and other promoters/directors of PCL were holding and have transacted in shares of PCL in dematerialized form only during the period of investigation. It has been claimed by the Noticee that he and other promoters had pledged the shares with some financiers. In this regard, it is observed that one of the fundamental requirements for creation of a valid pledge is 'delivery of goods' by the pledgor so as to put the goods in

effective control of the pledgee and outside the control of the pledgor. Where securities are held in dematerialized form it is not possible to 'deliver' the shares physically, therefore, the manner and procedure for creation of pledge of securities in dematerialized form has been laid down in section 12 of the Depositories Act, 1996 and regulation 58 of the SEBI (Depositories and Participants) Regulations, 1996. The law in this regard ensures that when dematerialized securities are pledged, they remain in the pledgor's beneficial ownership account or demat account but they are blocked so that they can not be used for any other transaction. As the law has laid down a procedure to be followed for creation of pledge of securities in dematerialized form therefore, it must be followed for creating a valid pledge in cases of dematerialized securities. The demat account statement of the Noticee do not indicate that any pledge on shares of PCL was created. Demat account statements clearly indicate change in beneficial ownership of those shares. Further, the Noticee has not produced any detail or evidence which may suggest that the prescribed procedure for creation of pledge for dematerialized securities were followed. Therefore, in light of the above facts, I am of firm view that no pledge was created.

21. With regard to the reliance placed by the Noticee upon letters written by Amin Distributors and PITPL to claim that the shares were pledged by them, I find that the Noticee has claimed that the shares of the promoter group were pledged for an amount of ₹ 82 lakh, however, the available documents indicate that in this regard only ₹ 75,01,300 were paid to the promoters. It is apparent that the Noticee or other promoters have not made any attempt to recover the balance amount. They have also not provided the investigating authority with the name and address of the partners/proprietors of Amin Distributors from whom lakhs of rupees were received by them. It is also observed that the prevailing market price as on May 06, 2005 (the date of agreement with Amin Distributors was May 07, 2005) was ₹ 14.01 and they even agreed to pledge/transfer the shares at unreasonably high rate of ₹ 20.65. Further, the agreements were either on plain sheet of paper or on letter heads and further, the letters sent by Amin Distributors do not indicate that the said terms were agreed upon by the promoters. Thus, these circumstances also make the plea of the Noticee unreliable.
22. It is observed on the basis of analysis of the off-market transactions and the said claim of "pledge agreements" that the promoters had agreements with Amin Distributors (for 5, 58,350 shares) and PITPL (for 2, 55,900 shares). However, in total they transferred 9, 61,600 shares to 17 entities and out of it 8, 86,000 shares were transferred to the six related /connected entities mentioned above. In case of PITPL, despite being a company and having separate demat account, 1,43,000 shares were transferred in the personal demat account of Shri Dharmesh Sheth (Director of PITPL). Promoters/directors of PCL stated that they

provided signed delivery instruction slips without mentioning name of transferee to Manish Ajmera, Kishor Janani and his associate Yatin Shah. It has been already stated that these entities were known to the promoters of PCL and were related /associated with each other. It has been admitted by the promoters that they received ₹ 75,01,300 from M/s. Amin Distributors and PITPL. I am of the view that handing over signed off-market delivery instruction slips and receiving consideration leaves no doubt that the transactions entered into by the Noticee and other promoters with the counterparties were not pledge but it were off-market transfer of shares. It is also pertinent to mention here that PCL is a registered stock broker of BSE and NSE and in this circumstance it can not be said that its directors and promoters did not know about creation of pledge held in dematerialized form or about the effect of signed off-market delivery instruction slips. Thus, I am of the view that the plea of the Noticee that the shares were pledged and he was not aware about the off-market transfer of those shares of PCL from his account or from the accounts of the promoter group is in-correct and has been made only to mislead the investigations and to deny the charges.

23. In fact, as has been discussed hereinafter, the conduct of the Noticee and other promoters/directors of PCL during, before and after these off-market transfers clearly indicate that the promoters/directors of PCL acted in connivance with the said six entities mentioned above to manipulate the price of the scrip. It is observed from the shareholding pattern, as reported to BSE, that promoters were holding 1,08,23,500 shares (80.09%) of PCL at the end of quarter ended on December 31, 2004. The Noticee sold 1,81,000 shares of PCL in the month of March 2005 and other promoter and promoter group entities have also sold large number of shares in the month of March 2005, however, this was not reflected in the shareholding pattern of the Company. Further, in the Board Meeting of the Company held on July 4, 2005 the board of directors recommended dividend at the rate of 10% per share and this information was disseminated to the stock exchange. The dividend was subsequently not declared. The Noticee has submitted that the dividend was not declared as in the board meeting held on November 18, 2005 the board of directors "revised the accounts by cancellation of dividend". In the circumstances, it raises suspicion as to why the dividend was recommended at the first instance. This apart, declaration of dividend is price sensitive information which is mandatorily required to be furnished to the stock exchange at the earliest. Reversal of such decision is equally price sensitive and it should have also been informed to the exchange at the earliest. The Noticee has stated in his reply that the information was disclosed to the stock exchange however, he has not submitted any evidence to support his claim, and therefore, mere *ipse dixit* of the Noticee can not be accepted. The Noticee and other promoter and promoter group entities continued to transfer shares in off market deals even during the quarter ended on June 30, 2005 but these

transactions were also not reflected in the quarterly shareholding report made to BSE. Further, the investigations has also revealed that out of the net transfer of 9,35,650 shares of PCL by the promoters 8,86,000 shares (94.69%) were transferred in off market deals to entities who were known to the promoters/directors of PCL and who were related/associated with each other. The entities who received shares via off-market transactions from the promoters started trading in those shares in the market in large volumes. Had the deal between them was that of pledge, the Noticee and other promoters/directors should have taken legal recourse against the pledgee, when it came to there notice that Manish Ajmera and others have dishonestly transferred those shares, but they did not do so. Subsequent to receipt of letter dated April 24, 2006 from BSE asking them to explain as to why the changes in shareholding of promoters was not reflected in the shareholding pattern of the Company, the promoters admitted that the shareholding pattern reported to the exchange was not correct and took the false plea that the shares were pledged and not sold. Thus, the events and circumstances discussed above leaves no doubt that the Noticee along with other promoter/directors of the Company, even after having transferred shares through off market deals, caused to be reported false information to the exchange and also made certain corporate announcements in order to mislead investors. Further, during this period they also transferred their holdings in the scrip to six associated entities, who indulged in synchronized trades and created huge artificial volume in the scrip in order to raise its price and ultimately off loaded the shares in the market jeopardizing the interest of investors. Such manipulative trades entered into by the said six entities, the details of which were provided to the Noticee along with the SCN is briefly mentioned below.

24. The investigation report mentions that these six entities made a total purchase of 58,47,498 shares and a total sale of 67,50,621 shares on BSE. The gross quantity of shares traded on BSE during the investigation period was 1,25,98,119 and in it the gross volume of shares traded by these six entities accounted for 24.8% of the gross volume on the exchange. Out of these trades, these six entities entered into trades with each other for 13, 04,192 shares on 45 trading days out of 90 trading days of the period of Investigation. Further, on 11 trading days, the trading between the said groups accounted for volumes in the range of 15-30% of total market volume. It is also observed that around 37% of trades among these six entities (constituting 4,80,643 shares) were executed where buy and sell orders were placed within a gap of one minute of each other of which trades for 1,14,925 shares i.e. approximately 8.8% of the trades were synchronized as the rate and quantity of buy and sell order placed were also identical.

25. In light of all the above facts and circumstances of the case, I am of the opinion that in collusion with others the Noticee and the said promoters/directors of the Company, employed manipulative and deceptive game plan to defraud investors and off load their stake in the Company at such manipulated prices at the cost of other investors dealing in the scrip and thereby violated the provisions of regulations 3, 4(1), 4(2)(e) and 4(2)(f) of the PFUTP Regulations. This violation makes the Noticee liable for penalty under section 15HA of the SEBI Act.
26. Another allegation against the Noticee is that he has failed to make disclosure to PCL in terms of regulation 13(4) of the PIT Regulations. It has been alleged that the Noticee was a director of PCL and he transferred 3,12,000 shares (2.3%) of PCL through off market deals to Sayyed Mustafa and others before June 17, 2005, which is more than 1% of total shareholding of the Company. This change in shareholding of the Noticee in PCL was required to be disclosed to the Company under regulation 13(4) of PIT Regulations in the prescribed form and within the prescribed time. It has been alleged that the Noticee has failed to do so.
27. With regard to this allegation the Noticee has again submitted that as the shares were pledged with Amin Distributors, PITPL, Manish Ajmera, Kishore Janani and Yatin Shah and he had handed over signed off-market delivery instruction slips to Kishore Janani and Manish Ajmera without mentioning any name of the transferee and they dishonestly transferred these shares without any notice to him therefore, the required disclosures could not be made.
28. It has already been established above that the claim of the Noticee that the shares were pledged with Amin Distributors and PITPL can not be sustained and is false. Noticee's handing over of signed off market delivery instruction slips to Kishore Janani and Manish Ajmera is sufficient to show that he intended to transfer those shares and this prevents him from subsequently saying that he was not aware about the sale of shares from his demat account. It is evident that the shares were transferred from the demat account of the Noticee to other entities and it clearly indicate change in beneficial ownership in respect of these shares. Since the required disclosures were not made, therefore, I am of the view that the Noticee has violated the provisions of regulation 13(4) of the PIT Regulations and hence liable for penalty under section 15A (b) of the SEBI Act.
29. In regard to the allegation of Noticee's non-compliance with the summons and directives of the investigating authority, I have noted that in connection with the aforesaid investigations,

summons dated May 25, 2009 was issued to the Noticee under section 11C (3) and 11C (5) of the SEBI Act by the investigating authority of SEBI requiring him to appear personally and to furnish certain information/documents before him (investigating authority). Vide letter dated May 27, 2009 the Noticee sought extension of time till June 03, 2009. On June 03, 2009 the Noticee appeared but did not produce the documents sought from him. However, on June 03, 2009 he agreed to provide following documents/information to the investigating authority by June 10, 2009:

- (i) *Details of off-market transfer by the promoters.*
- (ii) *Details regarding net transfer of 9,94,450 shares which accounted for around 54% of the total listed capital held by them during the period of investigation.*
- (iii) *Share Pledge agreements with counter parties.*
- (iv) *Details, name and addresses of counter parties to whom shares were transferred.*
- (v) *Date wise, counter-party wise off market transfers of each promoters and any party associated with the promoters.*
- (vi) *Total consideration received with names of persons, amount, date on which consideration was received and cheque details.*
- (vii) *Copy of agreement entered with Kishore Janani, Manish Ajmera and Yatin Shah.*
- (viii) *Details of the client, client ID and DP ID to whom Juveria Puthawala transferred 82,100 shares.*
- (ix) *Details of the client, client ID and DP ID who transferred 1,27,200 shares to Uves Sareshwala.*
- (x) *Details of demat of 50 lakh shares of Zafer Sareshwala.*
- (xi) *Details of 50 lakh shares sold by Habibullah Akudi to Yunus Sareshwala, Uves Sareshwala, Talha Sareshwala and the purchase details.*
- (xii) *Copies of the above demat statement.*
- (xiii) *Details explaining unsecured loans of Rs.82 lakh to the company.*
- (xiv) *Details (Names and amount) of other advances of Rs.2,00,17,258 on March 31, 2006.*
- (xv) *Details as to whether about 11.3 lakh shares were fraudulently transferred by promoters and associates to other entities. Rectified shareholding pattern of the subsequent quarters.*

30. It has been alleged that the Noticee failed to comply with the aforesaid summons and did not furnish the required information/documents. On June 23, 2009 the investigating authority again advised him to provide certain information and details regarding his agreement with M/s. Amin Distributors and PITPL. The Noticee once again failed to provide

details/information/documents sought by the investigating authority. Hence, it has been observed by the investigating authority that the Noticee has been uncooperative and has failed to furnish documents and information. Based on the above, it has been alleged that the Noticee has failed to furnish the required information/documents in response to the summons issued by the investigating authority, and the same is in violation of the provisions of sections 11C (2) and 11C (3) of the SEBI Act which makes the Noticee liable for penalty under section 15A (a) of the SEBI Act.

31. It is observed that the aforesaid summons and letters were received by the Noticee. He has not disagreed with the fact regarding his non-submission of the required information/documents to the investigating authority. The Noticee has submitted that the information/documents were not submitted as the same were not available with him. I am of the view that as the Noticee has not raised this issue before the investigating authority therefore it is an afterthought. This apart, it is observed from the above that the information/documents pertains to off-market deals, name and details of counterparties, details of payments made/received, copy of agreements entered into between the Noticee and others. Details of the persons with whom he claimed to have entered into share pledge agreement etc. It is evident that these information and documents relates to agreement relating to transaction in securities in which the Noticee or persons related to him were parties. The Noticee was under an obligation to preserve and produce these documents and provide information to the investigating authority as sought from him. The information / documents sought by the investigating authority were vital for conducting the investigations and had the Noticee provided the required information/ documents, the investigations could have been conducted in a more effective manner. Further, it was not possible for the investigating Authority to obtain the said information / documents through any other source but from the Noticee. Non-cooperation with the Investigating Authority and not providing of the relevant details/documents sought by him, have definitely hampered the investigations to a great extent. Therefore, in light of the facts and circumstances of the case and the material on record, I hold the Noticee guilty of violation of sections 11C (2) and 11C (3) of the SEBI Act, for which there is a provision of penalty under section 15A (a) of the SEBI Act.

32. Another allegation against the Noticee is that the off-market transaction in the shares of PCL entered into by him during the period of investigation was in violation of the provisions of sections 13 and 16 read with section 18 of the SC(R) Act. It has been alleged that the Noticee entered into various off-market sale transactions in the shares of PCL with Giridhar Vagadia, Sayyed Mustafa, Raju G Shah and others in the month of March 2005 and June 2005 (the details regarding these off-market transactions were provided to the Noticee along

with the SCN). In response to a query raised during the recording of statement of the Noticee on June 3, 2009 by the investigating authority regarding receipt of consideration in lieu of the shares transferred in off-market, the Noticee has stated as under:

"First we have given demat transfer slips to the concerned counter parties who got the shares credited in the respective demat account. We have received money in installments within 2-3 months of the said demat transfer. The promoters and directors have received a total of Rs.82 lacs from the counterparties. The complete details will be provided by June 10, 2009. The bank statement of each of the promoter / director showing receipt of money will be provided by June 10, 2009. ..."

33. A combined reading of sections 13, 16 and 18 of SC(R) Act and various notifications issued in this regard suggests that apart from transacting through or with members of recognized stock exchange, only 'spot delivery contract' can be legally entered into between parties for transacting in securities out side the exchange mechanism. Section 2(i) of the SC(R) Act defines spot delivery contract in the following manner:

"Spot delivery contract means a contract which provides for –

- i. Actual delivery of securities and the payment of a price therefore either on the same day as the date of the contract or on the next day.*
- ii. Transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository."*

34. A contract for sale of shares, in order to qualify as a "spot delivery contract" must provide for actual delivery of shares and the payment of price either on the same day as the date of the contract or on the next day, (Hon'ble Bombay High Court in the case of *Norman J. Hamilton v Umedbhai S. Patel and Others*). In the instant case, the Noticee has not furnished the details about receipt of consideration even after undertaking to furnish the same to the investigating authority. He has also not furnished such details even before me in response to the allegations in this regard in SCN. Further, he has stated during the investigations that the consideration was received in installments in two-three months. As the evidence regarding receipt of payment within the time prescribed under section 2(i) of SC(R) Act should be in the possession of the Noticee and the burden was on him to produce such evidence when allegation in this regard was made in the SCN. However, he has not produced any material

or evidence to refute the allegations. Therefore, I am of the view that the Noticee has no defense in respect of this allegation and he has admitted the violation.

35. In the facts and circumstances of the case and on the basis of the material and information available on record, I am of the view that the off-market transactions entered into by the Noticee were not 'spot delivery contracts' as defined under section 2, sub-section (i), of the SC(R) Act. These transactions are, therefore, not exempted under section 18 of the SC(R) Act from being governed under sections 13 and 16 of the SC(R) Act and thus, are in violation/contravention of the said provisions of the SC(R) Act. The violation/contravention of the aforesaid provisions of the SC(R) Act makes the Noticee liable for monetary penalty under section 23 H of SC(R) Act.
36. Therefore, on the basis of the charges established against the Noticee I am of opinion that the Noticee is liable for imposition of penalty under sections 15 A(a), 15A(b) and 15HA of the SEBI Act and also under section 23H of the SC(R) Act. These provisions are as under:

15A. Penalty for failure to furnish information, return, etc.

If any person, who is required under this Act or any rules or regulations made thereunder,-

- (a) to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to 36[a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;*
- (b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;*

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.

23H. Penalty for contravention where no separate penalty has been provided.

Whoever fails to comply with any provision of this Act, the rules or articles or byelaws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.

37. While determining the quantum of penalty under sections 15A(a), 15A(b) and 15HA of the SEBI Act and under section 23H of SC(R) Act, it is important to consider the following factors:

- (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.*

38. Regarding penalty under section 15A(a), 15A(b) and 15 HA of the SEBI Act and under section 23H of the SC(R) Act for indulging in above said violations, the investigations have not revealed the unlawful gains made by the Noticee. It is also not possible from the information/details available with me to arrive at the figures for the profit made by the Noticee or the loss suffered by the investors. Further, as regards repetitive nature of default it is observed that Hon'ble Securities Appellate Tribunal in Appeal No. 146 of 2010 decided on January 12, 2011 has upheld the finding that the Noticee along with others had indulged in fraudulent and unfair trade practices. Therefore, the indulgence of the Noticee in unfair trade practices is repetitive. Taking into consideration the nature and gravity of violations, the adverse impact of such acts of the Noticee in disturbing the equilibrium of the fair market, shaking the investors' confidence in the scrip, and intentional disregards/unheeding to the regulator on several counts, it is necessary that a deterrent penalty is imposed on him to meet the ends of justice.

39. Therefore, based on the facts and circumstances of the case, I am of the opinion that a penalty of ₹ 1,50,000/- (Rupees one lakh fifty thousand only) under the provisions of section 15A(a), ₹ 1,00,000/- (Rupees one lakh only) under the provisions of section 15A(b) and ₹ 4,00,000/- (Rupees four lakh only) under the provisions of section 15 HA of the SEBI Act and a penalty of ₹ 1,00,000/- (Rupees one lakh only) under section 23 H of the SC(R) Act, on the Noticee shall commensurate with the violations committed by him.

ORDER

40. In exercise of the powers conferred upon me under Section 15 I of the SEBI Act and 23 I of the SC(R) Act, I impose a consolidated penalty of ₹ 7, 50,000/- (Rupees seven lakh fifty thousand only) on the Noticee under the provisions of sections 15 A and 15 HA of the SEBI Act and under section 23 H of the SC(R) Act. The Noticee shall pay the said amount of

penalty by way of demand draft in favor 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 the Chief General Manager, IVD – ID 7, Securities and Exchange Board of India, SEBI Bhavan, Plot No.C4-A, “G” Block, Bandra Kurla Complex, Bandra (East), Mumbai–400 051.

41. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: **February 25, 2011**

Place: **Mumbai**

Satya Ranjan Prasad
ADJUDICATING OFFICER