BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PKB/AO –71/2010]

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: M/s. Jitendra Harjivandas Securities Private Limited
(SEBI Regn. No. INB011191138**)**
(PAN: AAACJ2849K**)**
In the Matter of: Betala Global Securities Ltd.

FACTS OF THE CASE

1. The investigation in the scrip of Betala Global Securities Limited (hereinafter referred to as the "**company**") was taken up by Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") to examine the trading in the scrip of the company for the period from May 2, 2003 to November 21, 2003 (hereinafter referred to as "**investigation period**") subsequent to an investigation by the Bombay Stock Exchange (hereinafter referred to as "**BSE**") examining the trading pattern in the scrip of the company. SEBI conducted investigation into trading in the scrip of the company to ascertain whether any provision of the SEBI Act, 1992 and various rules and regulations made thereunder had been violated as there was a sharp rise in price of the scrip during the investigation period.

2. The company was incorporated in 1994 and after a public issue; the company got listed in 1996. It was observed that the company had meager income and incurred losses in all the quarters of Financial Year 2002-2003. It was observed that during the first

two quarters of Financial Year 2003-2004 also the company incurred losses.

3. It was observed that the price of the scrip increased from Rs. 34.05 on May 02, 2003 to Rs. 120 on November 13, 2003 (reflecting a price rise of around 254%) and thereafter, the scrip closed at Rs. 109.25 at the end of the investigation period, i.e., on November 21, 2003. It was observed that during the investigation period a total of 1,54,18,430 shares of the company were traded. It was further observed that there were no major announcements or news items relating to the company during the investigation period.

4. It was observed that during the investigation period, a group of clients connected to each other i.e., Mahesh Mistry, Dharmendra S. Thapa, Pravin Kumar Jain, Suman Saini, Jalaj I Batra, Nicholas Gomes, Piyush Shah, Dimple Shah, Harish Kapadia, Vinod Khetan, M/s Shri Sai Shraddha Leasing & Hire Purchase Finance Private Limited, M/s Arihant Securities and M/s Shiner Trading Co. Pvt. Ltd. (hereinafter collectively referred to as "**Mahesh Mistry Group**") have traded in the shares of the company through various trading members and mostly through Jitendra Harjivandas Securities Pvt. Ltd., Action Financial Services (India) Ltd., Ramaben Samani Finance Pvt. Ltd., etc.

5. It was observed that during the investigation period, majority of the dealings in the scrip of the company was accounted for by entities belonging to the Mahesh Mistry Group. It was also observed that some of the entities belonging to the Mahesh Mistry Group had common address i.e., 52, 3rd Floor, Marine Street, Mumbai -400 002. The group contributed around 67% of the total volume during the investigation period. It was further observed that out of the total of 70,55,322 shares traded between members of Mahesh Mistry Group, orders for 35,88,474 shares were synchronized and in many trades the entities belonging to the Mahesh Mistry Group were counterparties to each other. The details with regard to connection between the entities belonging

to Mahesh Mistry Group as available on record and enclosed with the SCN as Annexure III are as follows:

Serial No.	Name of the entity	Related to	Nature of Relationship	Clients codes
1.	Mahesh Mistry	Piyush Shah	Piyush Shah introduced Mahesh Mistry to the broker Jitendra Harjivandas.	M170, 5995, 57001, M175, 4302, B13004, 052M
2.	Dharmendra Thapa	Pravin Jain	Introduced by Pravin Kumar Jain	4308, B13046, 2545, 052D008,
3.	Jalaj J Batra	Pravin Jain	Introduced by Pravin Kumar Jain	57086, E5J030, 4334
4.	Piyush Shah	Dimple Shah	Dimple Shah is the wife of Piyush Shah.	PP3, T52
5.	Shiner Trading Co	Pravin Jain	Dharmendra Thapa, director of Shiner Trading Co	S061
6.	Suman Saini	Pravin Jain	Introduced by Pravin Kumar Jain	2543,5411, S051
7.	Dimple Shah	Pravin Jain	Introduced by Pravin Kumar Jain	5894
8.	Harish Kapadia	Pravin Jain	Introduced by Pravin Kumar Jain	5895
9.	Vinod Khetan	Pravin Jain	Introduced by Pravin Kumar Jain	V134, 4258
10.	Pravin Kumar Jain		Introduced Mahesh Mistry, Nicolas Gomes, Dharmendra Thapa, Jalaj Batra, Suman Saini, Piyush Shah, Dimple Shah, Harish Kapadia, Vinod Khetan	E5P701
11.	Sai Shraddha Leasing & Hire Purchase Finance Pvt Ltd.	Pravin Jain	Dharmendra Thapa and Suman Saini are directors.	2533
12.	Arihant Securities Ltd	Pravin Jain	Pravin Kumar Jain has signed in KYC	C211, 4320
13.	Nicholas Gomes	Pravin Jain	Introduced by Pravin Kumar Jain	5410

6. It was observed from the last traded price analysis (hereinafter referred to as "**LTP Analysis**") that in total 15,48,302 shares of the company were traded at a price different from the last traded price, which constituted 10.04% of the total volumes traded in the scrip during that period. It was also observed that the price range of such trades fluctuated from Rs. (-)11.20 to Rs. 9.60 and that the total price rise due to such price difference, as coming out in the LTP Analysis, was calculated to be Rs. 77 for the investigation period. It was further observed that during the investigation period, for a time difference below 60 seconds, there have been

36,121 trades resulting in quantity of 81,81,055 shares amounting to 53.06% of the total traded quantity.

7. Subsequent to the examination of trades executed during the investigation period, it was observed that there were 117 instances in which the trades were executed with a price difference of Rs. 3 or more than the previous traded price and out of which the clients forming part of Mahesh Mistry Group trading through different brokers accounted for 97 such instances, i.e., around 83% of incremental trades executed with a price difference of Rs. 3 or more than the previous traded price was accounted for by clients forming part of Mahesh Mistry Group.

8. During the investigation period, it was observed that the entities belonging to Mahesh Mistry Group used to trade actively in shares of the company through M/s. Jitendra Harjivandas Securities Pvt. Ltd. (hereinafter referred to as "**Noticee**"). It was also observed that the Noticee, as a broker, bought 41,80,165 shares and sold 15,70,335 shares of the company for Mahesh Mistry Group during investigation period.

9. It was observed that numerous matched trades occurred between trading members Action Financial Services (India) Ltd., Ramaben Samani Finance Pvt. Ltd. and the Noticee during investigation period. It was also observed that there had been a collective consortium of group of people, i.e., the Mahesh Mistry Group, who dealt in the scrip of the company and made payments and deliveries to the Noticee on a common basis on behalf of each other for their liability. It was further observed that one of the entities of Mahesh Mistry Group, namely Shri Piyush Shah was working as a remiser with the Noticee who introduced some other entities of Mahesh Mistry Group to the Noticee and traded on their behalf in lieu of some brokerage and commission.

10. It was observed subsequent to a call from the Surveillance Department of BSE in the month of November 2003, informing

about some fictitious and non genuine trades in the scrip of the company, the Noticee stopped transactions of those clients who were introduced by Shri Piyush Shah. It was also observed that on enquiry into the dealings, the Noticee found that the main persons who were dealing in the scrip of the company or making payments were Shri Piyush Shah, Shri Pravin Kumar Jain and Shri Jalaj Batra on behalf of Shri Mahesh Mistry, Shri Harish Kapadia and Smt. Dimple Shah, all of them being members of the Mahesh Mistry Group.

11. It was observed that the Noticee had multiple average credit balance ranging from Rs. 50-80 lakhs (approx) in the account of Shri Mahesh Mistry for a long period (July to Oct, 2003 approx) as the said entities belonging to the Mahesh Mistry Group were the bulk purchasers and afterwards the Noticee had a debit balance of Rs. 60,80,440.91 (including brokerage of Rs. 27 lakhs approx) on November 18, 2003 in the account. It was also observed that entities belonging to Mahesh Mistry Group asked the Noticee to purchase shares of the company in different client name and simultaneously the entities belonging to Mahesh Mistry Group sold shares of the company. It was further observed that to recover the dues the Noticee had entered into an arrangement with the entities of Mahesh Mistry Group whereby the entities of Mahesh Mistry Group sold shares of the company in the market from one side and bought from another side. It was also observed that the said arrangement was entered into because of the fact that on account of sales made by Mahesh Mistry Group, the Noticee received the credit from the exchange and secured the money.

12. In view of the aforesaid, it was alleged that the Noticee aided and abetted the entities belonging to the Mahesh Mistry Group in employing manipulative and deceptive devices of trading such as circular, reversal and synchronized trades and cross deals by providing a platform for such trades which led to manipulation of price and creation of artificial demand for the scrip of the

company as also a false appearance of trading in the scrip of the company. It was also alleged that the Noticee, as a stock broker, indulged in manipulative and fraudulent transactions and created a false market of shares of the company by acting in concert with the entities of Mahesh Mistry Group. It was further alleged that the Noticee, as a stock broker, failed to show high standards of integrity, promptitude and fairness as well as failed to act with due skill, care and diligence in the conduct of business.

APPOINTMENT OF ADJUDICATING OFFICER

13. Shri D. Sura Reddy was appointed as the Adjudicating Officer vide Order dated July 22, 2008 to inquire and adjudicate under Section 15HA and Section 15HB of the SEBI Act, 1992 the alleged violation of the provisions of Regulation 4(2) (a) and (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003 read with Clause A (1), (2), (3) and (4) of the Code of Conduct for Stock Brokers as laid down in Schedule II under Regulation 7 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992.

14. Subsequent to the transfer of Shri D. Sura Reddy, I was appointed as the Adjudicating Officer vide Order dated December 10, 2008.

SHOW CAUSE NOTICE, HEARING & REPLY

15. A show cause notice (hereinafter referred to as "**SCN**") in terms of the provisions of Rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 {hereinafter referred to as "**Rules**"} was issued to the Noticee on November 03, 2009, seeking reply of the Noticee as to why an inquiry should not be held against the Noticee in respect of the violations alleged to have been committed by him. The said SCN was duly delivered to the Noticee on November 04, 2009. Subsequently, the Noticee, through its authorised representative and legal counsel, M/s. B. Amin & Co. sent a letter dated November 17, 2009 expressing their intention to give a detailed

reply to the SCN at the earliest. Thereafter, vide letter dated November 26, 2009 the Noticee was again advised to submit its reply by December 07, 2009. Subsequently, vide letter dated December 11, 2009 the authorised representative of the Noticee requested for four week time to submit reply and after considering the request, vide letter dated December 16, 2009 the Noticee was advised to submit its reply by January 11, 2010.

16. As the Noticee did not submit any reply till then, in the interest of natural justice, an opportunity of personal hearing was granted to the Noticee vide Notice of Inquiry dated January 14, 2010 and the Noticee was advised to attend the hearing on January 28, 2010. Mr. Anjal N Amin of M/s. B. Amin & Co., Advocates & Solicitors, the authorised representative of the Noticee, appeared for the hearing and submitted reply vide letter dated January 27, 2010. Thereafter, vide letter dated February 22, 2010, the Noticee submitted further information, inter-alia, a copy of ledger statement of their client Shri Mahesh Mistry for the period November 18, 2003 to March 24, 2004 and requested for another opportunity of personal hearing. Accordingly, one more personal hearing was granted to the Noticee vide Notice of Inquiry dated March 04, 2010 and the Noticee was advised to attend the hearing on March 23, 2010. Mr. Anjal N Amin of M/s. B. Amin & Co., the authorised representative of the Noticee, appeared for the hearing on the scheduled date and submitted as follows:

"My clients may be brokers for these transactions but they were not part to any nexus/ conspiracy for reversal of transactions if any. Their bonafides acts were without knowledge of alleged circular/ reversal trades. All this have brought out in our written submissions."

17. During the course of Adjudication Proceedings, certain typographical errors were observed in the data relating to buy order time and sell order time of trades executed from July 14, 2003 to July 18, 2003 as provided to the Noticee in Annexure IV of the SCN and subsequently a corrected copy of the aforesaid trades was furnished to the Noticee at the time of hearing on

March 23, 2010 and was advised to make submissions, if any, in this regard. It was stated by the Authorised Representative that they need to seek instructions of the Noticee and would make further submissions by 5th April, 2010, if so required. However, till date, the Noticee has not made any further submissions and hence, the inquiry is proceeded with taking into account the facts of the case and reply of the Noticee.

CONSIDERATION OF ISSUES

18. After a careful examination of the SCN and the documents available on record, I have the following issues for consideration, viz.,
    A. Whether the Noticee has violated the provisions of Regulation 4(2) (a) and (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003 read with Clause A (1), (2), (3) and (4) of the Code of Conduct for Stock Brokers as laid down in Schedule II under Regulation 7 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992?
    B. Whether the Noticee is liable for monetary penalty under section 15HA and 15HB of the SEBI Act, 1992?
    C. What quantum of monetary penalty should be imposed on the Noticee, taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

FINDINGS

19. On perusal of the materials available on record, reply of the Noticee and giving regard to the facts and circumstances of the case, I record my findings hereunder.

ISSUE 1: Whether the Noticee has violated provisions of Regulation 4(2) (a) and (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003 read with Clause A (1), (2), (3) and (4) of the Code of Conduct for Stock Brokers as laid down in Schedule II

under Regulation 7 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992?

20. Before proceeding further, it will be appropriate to refer to the aforementioned provisions which read as follows:

SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003

Regulation 4: Prohibition of manipulative, fraudulent and unfair trade practices

(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;

(e) any act or omission amounting to manipulation of the price of a security;

SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992

Regulation 7: Stock-Brokers to abide by Code of Conduct.
The stock-broker holding a certificate shall at all times abide by the Code of Conduct as specified at Schedule II.

Schedule II: Clause A:

(1) INTEGRITY: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.

(2) EXERCISE OF DUE SKILL AND CARE: A stock-broker, shall act with due skill, care and diligence in the conduct of all his business.

(3) MANIPULATION: A stock-broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains.

(4) MALPRACTICES: A stock-broker shall not create false market either singly or in concert with others or indulge in any act detrimental to the investors interest or which leads to interference with the fair and smooth functioning of the market. A stock-broker shall not involve himself in excessive speculative business in the market beyond reasonable levels not commensurate with his financial soundness.

21. In response to the observations and allegations against the Noticee, the legal counsel and authorised representative of the Noticee vide letter dated January 27, 2010 submitted, inter alia, the following:

- *The present show cause notice pertains to transactions made by particular group of individuals who have been involved in circular and reversal trades of Betala Global Securities Ltd. which our clients are not aware of and only on intimation by the surveillance department of BSE, our clients immediately stopped transactions pertaining to the said groups and have thereafter incurred a loss of Rs.65,00,000/-. Our clients therefore at the outset submit that the question of fraudulent activities for wrongful gains or violation of the code of conduct does not arise at all.*
- *Our client further states that the Mahesh Mistry group (hereinafter referred to as the said group) has been dealing in approximately 120 scrips and have traded shares on several occasions and therefore it is impossible or rather the said group was never under suspicion of our client since so many scrips were traded by the said group.*
- *Our client states that on receiving prompt payments our clients allowed their client to trade in large quantities of shares which the said group has taken undue advantage of not only trading in the present company but also other companies of which our client only came to know on intimation by the surveillance department and stopped their trading. It is therefore submitted that our clients have acted diligently and taken precautions of not to encourage the said group from trading further. Our client states that they have never done business with the broker firms named in the said notice before and therefore totally deny that it was the intention of our client for manipulation in the said scrip.*
- *Our client totally deny the charges that they abetted the said group for the purpose of making profits. The testimony of one Mr. Piyush Shah is not binding on our clients and the same is a concocted story given in the said testimony alleging our clients to be involved in the said group transactions.*
- *Our client further states that they are a broker firm for the past 65 years and are holding the excellent reputation in the market and doing smooth business with good intentions and within the purview and laws of SEBI. The said incident has come upon our clients via the said group and is the only incident and event that has happened which has compromised the reputation of our clients leaving it to be evaluated by the Adjudicating Officer. Our client*

states that they always had, and have and will always have honest and good intentions to promote the security aspect of traders and investors and act in accordance with the market equilibrium.

- *Our clients states that the show cause notice itself admits the fact that our clients immediately stop all transactions of the said group after the surveillance department of the BSE informed our clients about the same and therefore it is submitted that our clients never had the slightest suspicion in their mind that the said group was eventually doing circular and reversal trades with intent to destabilise the market equilibrium in respect of not only this company but other companies which has compromised our clients trading business as brokers for no fault of theirs. Our client states that though such show cause notice issued by the Adjudicating Officer benefit of doubt shall be given to our clients as our clients have not committed any fault at the time of doing trading in the BSE.*
- *Our client therefore states that the show cause notice dated 3 November 2009 be withdrawn as the said actions mentioned in the said show cause notice are the handiwork of certain group of individuals acting together against the interest of the market equilibrium and other investors to which our clients are not involved or connected and should therefore not be penalised under the relevant provisions of law pertaining to fraudulent trade practices or code of conduct as more particularly highlighted in the said show cause notice.*

22. From the material available on record, it is observed that during the investigation period, the entities belonging to Mahesh Mistry Group used to trade actively in shares of the company through the Noticee, and the Noticee as a broker bought 41,80,165 shares and sold 15,70,335 shares of the company for Mahesh Mistry Group. In total, the Noticee has traded in 57,50,500 shares of the company for the Mahesh Mistry Group. It is pertinent to note that out of the total of 70,55,322 shares traded between members of Mahesh Mistry Group, orders for 35,88,474 shares were synchronized and in many trades the entities belonging to the Mahesh Mistry Group were counterparties to each other.

23. It is observed that numerous matched trades occurred between trading members Action Financial Services (India) Ltd., Ramaben Samani Finance Pvt. Ltd. and the Noticee. It is also observed that in such trades the time difference between buy order and sell order is few seconds only, thereby indicating synchronization in the logging in of the orders. In this regard, it is further observed that the trading data/details relating to synchronised trades of the Mahesh Mistry Group in the scrip of the company was provided to the Noticee as Annexure IV of the SCN and that these trades have not been disputed by the Noticee.

24. I note that the company had meager income and incurred losses in all the quarters of Financial Year 2002-2003. I also note that during the first two quarters of Financial Year 2003-2004 the company incurred losses. Besides, no major announcements or news item relating to the company was observed during the investigation period. It is thereby evident that the price movements and the volume of transactions in the shares of the company were artificial and were designed to create a false market, when the shares lack the fundamentals. I observe that the abnormal increase in price of the scrip of the company (from Rs. 34.05 on May 02, 2003 to Rs. 120 on November 13, 2003; reflecting a price rise of around 254%) was not backed by any change in the fundamentals of the company and as such was artificial and designed to create false market. I also find that the financial performance of the company was not at all impressive to warrant such trading and price rise.

25. The LTP Analysis, indicate that in total 15,48,302 shares of the company were traded at a price different from the last traded price, which constituted 10.04% of the total volumes traded in the scrip during that period. I further note that the price range of such trades fluctuated from Rs. (-)11.20 to Rs. 9.60 and that the total price rise due to such price difference, as coming out in the LTP Analysis, has been calculated to be Rs. 77 for the

investigation period. It was observed that there were 117 instances in which the trades were executed with a price difference of Rs. 3 or more than the previous traded price and out of which the clients forming part of Mahesh Mistry Group trading through different brokers accounted for 97 such instances, i.e., around 83% of incremental trades executed with a price difference of Rs. 3 or more than the previous traded price was accounted for by clients forming part of Mahesh Mistry Group. It was also observed that during the investigation period, for a time difference below 60 seconds, there had been 36,121 trades resulting in quantity of 81,81,055 shares amounting to 53.06% of the total traded quantity.

26. It has been alleged that the Noticee has aided and abetted the Mahesh Mistry Group in employing manipulative and deceptive devices of trading such as circular, reversal and synchronized trades and cross deals by providing a platform for such trades which led to manipulation of price and creation of artificial demand for the scrip of the company as also a false appearance of trading in the scrip of the company. This is established from the data as annexed to the SCN from where I find that the Noticee has entered into cross deals wherein the Noticee (trading member code – D0304) is appearing as a broker on both buy and sale side while trading in the scrip of the company for the entities belonging to Mahesh Mistry Group. Some instances of such trades are as follows:

Trade No.	Trade Date	Trade Time	Qty	Price	Buy Member Code	Buy Client Code	Sell Member Code	Sell Client Code	Buy Order Time	Sell Order Time	Time Difference Between Buy & Sell Order
48	22-May-03	12:55:10 PM	300	35.10	D0304	5895	D0304	PP3	12:55:10	12:55:09	0:00:01
63	22-May-03	1:33:16 PM	312	35.25	D0304	5895	D0304	PP3	13:33:16	13:33:15	0:00:01
90	22-May-03	3:22:06 PM	450	35.25	D0304	5895	D0304	PP3	15:22:06	15:22:06	0:00:00
16	23-May-03	10:57:31 AM	211	34.10	D0304	5895	D0304	PP3	10:57:27	10:57:31	0:00:04
142	23-May-03	3:07:21 PM	251	34.40	D0304	5895	D0304	PP3	15:07:21	15:07:21	0:00:00
51	26-May-03	10:57:37 AM	323	35.05	D0304	5895	D0304	PP3	10:57:36	10:57:36	0:00:00
11	27-May-03	10:02:55 AM	311	34.70	D0304	5895	D0304	PP3	10:02:55	10:02:53	0:00:02

132	27-May-03	1:29:43 PM	361	34.80	D0304	5895	D0304	PP3	13:29:43	13:29:43	0:00:00
296	2-Jun-03	3:27:27 PM	501	35.20	D0304	5895	D0304	PP3	15:27:26	15:27:27	0:00:01
316	2-Jun-03	3:30:01 PM	200	35.30	D0304	5895	D0304	PP3	15:30:01	15:29:57	0:00:04
53	3-Jun-03	10:24:21 AM	601	35.05	D0304	5895	D0304	PP3	10:24:19	10:24:21	0:00:02
29	4-Jun-03	10:11:16 AM	500	33.05	D0304	5895	D0304	PP3	10:11:16	10:11:08	0:00:08
62	5-Jun-03	10:54:32 AM	611	35.35	D0304	5895	D0304	PP3	10:54:32	10:54:30	0:00:02
106	9-Jun-03	11:15:20 AM	225	36.00	D0304	5895	D0304	PP3	11:15:15	11:15:20	0:00:05
123	11-Jun-03	11:55:56 AM	155	41.40	D0304	5895	D0304	PP3	11:55:54	11:55:55	0:00:01
1	27-Jun-03	10:01:17 AM	600	57.00	D0304	5995	D0304	PP3	10:01:17	10:01:15	0:00:02
288	27-Jun-03	1:59:19 PM	1000	58.50	D0304	5995	D0304	4308	13:59:18	13:59:19	0:00:01
40	30-Jun-03	10:07:36 AM	100	58.25	D0304	5895	D0304	PP3	10:07:36	10:07:35	0:00:01
118	30-Jun-03	12:45:31 PM	1000	57.50	D0304	5995	D0304	4308	12:45:31	12:45:01	0:00:30
501	2-Jul-03	1:57:25 PM	1000	61.00	D0304	5995	D0304	5410	13:56:52	13:57:24	0:00:32
12	4-Jul-03	10:11:37 AM	550	61.00	D0304	5895	D0304	4308	10:11:37	10:11:34	0:00:03
1	7-Jul-03	9:57:08 AM	500	61.00	D0304	5895	D0304	PP3	09:57:08	09:56:56	0:00:12
312	8-Jul-03	2:07:09 PM	1450	61.00	D0304	5995	D0304	4308	14:07:03	14:07:08	0:00:05
1	9-Jul-03	10:02:05 AM	250	61.00	D0304	5895	D0304	PP3	10:02:05	10:02:05	0:00:00
202	9-Jul-03	12:14:05 PM	1500	59.75	D0304	5995	D0304	4308	12:14:05	12:14:01	0:00:04
264	9-Jul-03	2:55:52 PM	1000	59.50	D0304	5995	D0304	4308	14:55:45	14:55:52	0:00:07
282	10-Jul-03	1:54:19 PM	1000	58.45	D0304	5995	D0304	4308	13:54:10	13:54:19	0:00:09
405	10-Jul-03	3:24:08 PM	1000	57.50	D0304	5995	D0304	4308	15:23:58	15:24:07	0:00:09
482	14-Jul-03	1:22:09 PM	1	61.15	D0304	5895	D0304	PP3	13:22:09	13:22:08	0:00:01
492	14-Jul-03	1:22:22 PM	2	61.20	D0304	5895	D0304	PP3	13:22:21	13:22:21	0:00:00
513	14-Jul-03	1:22:33 PM	1	61.25	D0304	5895	D0304	PP3	13:22:33	13:22:32	0:00:01
523	14-Jul-03	1:22:45 PM	1	61.20	D0304	5895	D0304	PP3	13:22:45	13:22:45	0:00:00
1	15-Jul-03	10:00:58 AM	600	63.00	D0304	5895	D0304	PP3	10:00:58	10:00:40	0:00:18
204	15-Jul-03	1:40:15 PM	1500	60.75	D0304	5995	D0304	4308	13:40:15	13:40:04	0:00:11
301	15-Jul-03	2:56:51 PM	1500	60.75	D0304	5995	D0304	4308	14:56:42	14:56:51	0:00:09
343	15-Jul-03	3:27:49 PM	500	59.80	D0304	5995	D0304	4308	15:27:41	15:27:49	0:00:08
1	16-Jul-03	10:00:56 AM	555	60.00	D0304	5895	D0304	PP3	10:00:56	10:00:56	0:00:00
246	16-Jul-03	2:02:04 PM	1000	60.05	D0304	5995	D0304	4308	14:01:49	14:02:04	0:00:15
310	16-Jul-03	3:27:18 PM	800	60.00	D0304	5995	D0304	4308	15:27:10	15:27:17	0:00:07
243	18-Jul-03	12:54:22 PM	1000	59.50	D0304	5995	D0304	4308	12:54:12	12:54:22	0:00:10
286	18-Jul-03	1:28:55 PM	1500	60.00	D0304	5995	D0304	4308	13:28:47	13:28:55	0:00:08
296	18-Jul-03	1:30:00 PM	1	57.55	D0304	5895	D0304	PP3	13:29:59	13:30:00	0:00:01
338	18-Jul-03	2:07:50 PM	100	60.00	D0304	5995	D0304	PP3	14:07:50	14:07:45	0:00:05
375	18-Jul-03	3:00:41 PM	1400	57.80	D0304	5995	D0304	2533	15:00:41	15:00:37	0:00:04
1	21-Jul-03	9:59:25 AM	500	59.50	D0304	5895	D0304	PP3	09:59:25	09:59:24	0:00:01
197	21-Jul-03	2:47:16 PM	1500	58.00	D0304	5995	D0304	4308	14:47:08	14:47:16	0:00:08

207	21-Jul-03	2:47:48 PM	1	58.25	D0304	5895	D0304	PP3	14:47:48	14:47:43	0:00:05
217	21-Jul-03	2:48:01 PM	1	58.40	D0304	5895	D0304	PP3	14:48:01	14:48:00	0:00:01

Client code 5895 – Harish Kapadia; Client code PP3 – Piyush Shah; Client code 5995 – Mahesh Mistry; Client code 4308 – Dharmendra Thapa; Client code 5410 – Nicholas Gomes

[Ref. Para 5 of the Order]

27. At this juncture, it is important to consider the method and the manner in which these trades have been executed during the investigation period. The motive, thereafter, automatically falls in line. In trades like self trades, cross deals, reversed transactions, circular trades, and synchronized trades, 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. In cases of cross deals, the intentional matching of orders becomes a matter of great simplicity as both the buy and sale trades and entered through the same broker. This results in artificial appearance of trading at the stock exchange and also of artificial appearance of discovery of price, misguiding the general investors.

28. Also, it is pertinent to mention that one of the clients of the Noticee, i.e., Shri Mahesh Mistry has traded heavily in the scrip of the company through the Noticee and has entered into self trades wherein he is appearing both as buy and sell client and in such trades the Noticee is appearing as one of the counterparty broker. It is also pertinent to note that in such trades, the time difference between buy and sell order is few seconds only. Some Instances of such trades are as follows:

Trade No.	Trade Date	Trade Time	Qty	Price	Buy Member Code	Buy Client Code	Sell Member Code	Sell Client Code	Buy Order Time	Sell Order Time	Time Difference Between Buy & Sell Order
447	26-Sep-03	04:01:08 PM	500	79.00	D0380	57001	D0304	5995	16:01:04	16:01:08	0:00:04

252	30-Sep-03	03:04:02 PM	300	81.90	D0380	57001	D0304	5995	15:04:02	15:03:57	0:00:05
207	01-Oct-03	01:56:37 PM	300	84.75	D0304	5995	D0380	57001	13: 56:37	13:56:31	0:00:06
217	01-Oct-03	01:57:01 PM	200	84.85	D0304	5995	D0380	57001	13: 57:00	13:56:48	0:00:12
227	01-Oct-03	01:57:33 PM	250	84.90	D0304	5995	D0380	57001	13: 57:33	13: 57:12	0:00:21
237	01-Oct-03	01:58:01 PM	250	84.80	D0304	5995	D0380	57001	13: 58:00	13: 57:54	0:00:06
283	01-Oct-03	02:05:21 PM	250	85.10	D0304	5995	D0380	57001	14:05:21	14:05:13	0:00:08
65	09-Oct-03	11:19:51 AM	500	93.50	D0304	5995	D0380	57001	11:19:51	11:19:47	0:00:04
75	09-Oct-03	11:20:16 AM	500	93.60	D0304	5995	D0380	57001	11:20:16	11:20:06	0:00:10
85	09-Oct-03	11:21:27 AM	200	93.65	D0304	5995	D0380	57001	11:21:27	11:21:22	0:00:05
98	10-Oct-03	11:45:10 AM	500	94.60	D0304	5995	D0380	57001	11:45:10	11:45:03	0:00:07
70	13-Oct-03	12:57:48 PM	500	96.90	D0304	5995	D0380	57001	12:57:47	12:56:51	0:00:56
80	13-Oct-03	12:57:48 PM	600	97.00	D0304	5995	D0380	57001	12:57:47	12:56:59	0:00:48

Client Code of Mahesh Mistry – 5995 and 57001; [Ref. Para 5 of the Order]

Trading Member Code of the Noticee – D0304

29. The trading pattern of the Mahesh Mistry Group reveals a proximity in the inputting of orders in such a way 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 clearly indicates synchronization in the logging in of the orders. The matching of these trades through the Noticee between the entities of Mahesh Mistry Group was not noted in a solitary incident or two; instead, a large number of synchronized trades got matched regularly during the investigation period. 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 the company in a way that was not the market determined volumes, possibly to induce other persons to invest in the said scrip. This results in artificial appearance of trading at the stock exchange and also of artificial appearance of discovery of price, misguiding the general investors. Besides, such transactions

relating to the scrip of the company were carried out without any intention of change of ownership of such security as in most of the trades, the counterparty clients are the members of Mahesh Mistry Group. It is pertinent to note that such trading patterns lead to price fluctuations and creates a false appearance of trading in the securities market and thereby tending to mislead the gullible investors.

30. I note that during the investigation period there were a number of trades in the scrip which were carried out with only a few counter parties, related/connected to each other identified as Mahesh Mistry Group. The fact that such transactions took place repeatedly over a period of time reinstates the fraudulent nature of such trades and moreover, the traded quantities were also high. The frequency of such trades as well as the manner in which the said trades were executed indicates that the clients of the Noticee could not have executed trades in abovementioned fashion without the knowledge and help of the Noticee.

31. It is also observed that there was a consortium of people, all belonging to the Mahesh Mistry Group, who were making payments and deliveries on a common basis on behalf of each other for their liability to the Noticee, also reinforcing the finding that the Mahesh Mistry Group was acting in concert while trading in the scrip of the company during the investigation period. It is pertinent to note that the Noticee has not furnished any explanation as to why they allowed third party share transfers and third party payments in respect of trades executed for Mahesh Mistry Group in the scrip of the company.

32. I also find that the Noticee has submitted copy of the ledger containing the account of Shri Mahesh M Mistry in support of their claim of loss of Rs. 65 Lakhs while dealing for Mahesh Mistry Group due to stoppage of trading of Mahesh Mistry Group on the intimation from surveillance department of BSE. From this I observe that the whole of the Mahesh Mistry Group

was maintaining only one account in the name of Mahesh Mistry and all transactions of the Mahesh Mistry Group was carried out through this one account only by the Noticee. From this I find that the Noticee was very well aware that the entities belonging to Mahesh Mistry Group were acting in concert for manipulative purposes and hence, the Noticee cannot plead ignorance about the manipulative intent of the Mahesh Mistry Group. From the above, I also find that the Noticee was willing accomplice with the Mahesh Mistry Group in their manipulative activities.

33. From the material available on record it is observed that one of the entities of Mahesh Mistry Group, Shri Piyush Shah was working as a remiser with the Noticee during the investigation period and the said entity introduced some other entities of Mahesh Mistry Group to the Noticee and traded on their behalf in lieu of some brokerage and commission. I note that the statement of Shri Piyush Shah as recorded by the Investigating Authority was also enclosed with the SCN as Annexure "V". I note that in their reply dated January 27, 2010 the Noticee has submitted that the statement of Shri Piyush Shah is not binding on them and labeled the same as a concocted story. However, the Noticee has not denied the fact that Shri Piyush Shah used to work as a remiser with the Noticee and used to trade in the scrip of the company for and on behalf of the entities of Mahesh Mistry Group during the investigation period.

34. From the material available on record, it is observed that the Noticee had multiple average credit balance ranging from Rs. 50-80 lakhs (approx) in the account of Shri Mahesh Mistry for a long period (July to Oct, 2003 approx) as the said entities belonging to the Mahesh Mistry Group were the bulk purchasers and afterwards the Noticee had a debit balance of Rs. 60,80,440.91 (including brokerage of Rs. 27 lakhs approx) on November 18, 2003 in the account. It is also observed that entities belonging to Mahesh Mistry Group asked the Noticee to purchase shares of the company in different client name and simultaneously the entities

belonging to Mahesh Mistry Group sold shares of the company. It is further observed that to recover the dues the Noticee had entered into an arrangement with the entities of Mahesh Mistry Group whereby the entities of Mahesh Mistry Group sold shares of the company in the market from one side and bought from another side. It is observed that the said arrangement was entered into because of the fact that on account of sales made by Mahesh Mistry Group, the Noticee received the credit from the exchange and secured the money.

35. From the facts of the case and submissions of the Noticee I note that the Noticee stopped trading with the clients belonging to Mahesh Mistry Group only after receiving a call from the surveillance department of BSE and not by its own, despite such non-genuine trading being carried on by the Mahesh Mistry Group over a period of time. It is my considerate opinion that in ordinary course of event, the pattern of the trades, as mentioned above, should have clearly triggered off alerts in the stock broker's mind. I do not find the submissions of the Noticee in this regard satisfactory. The contention of the Noticee that it was left with a huge outstanding/loss from its client Shri Mahesh Mistry in its books of accounts is not of much significance when his conduct while executing trades betrays his knowledge of the intention of his clients. Thus, the Noticee's submission that it had no knowledge about the non-genuine, synchronized/structured trades is unacceptable, more so, when such trades were being executed repeatedly over a period of time during the investigation period. Besides, the complicity of the Noticee with the Mahesh Mistry Group has already been discussed in detail in paragraphs 31 and 32 of this Order.

36. The position regarding the cross deals and synchronised trades executed by the Noticee further appears to be manipulative. These trades were not one or two isolated instances. These trades were carried out over a period of over several months, which cannot be justified or explained in any manner. 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 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. In this context, I refer to the observations made by the Hon'ble Securities Appellate Tribunal in Appeal No. 35 of 2002 (Triumph International Finance Ltd. vs. SEBI, decided on 04-05-2007) - "*…The question that arises for consideration is – could it be said that the appellant was innocent and whether such large number of trades could have matched on the screen without the knowledge and active involvement of the appellant as a broker. The answer has to be in the negative. It is the broker who plays a pivotal role in synchronising the trades with the counter broker and matches the same through the exchange mechanism by punching the buy and sell orders simultaneously. It is true that the brokers act on the advice of their clients but it is they who actually implement the game plan…….It is inconceivable that such large number of trades could have matched on the screen without the appellant as the buyer's broker being a party to the game plan. Since the buy and sell orders were punched into the system simultaneously in such large numbers and they all matched, we cannot believe that it was a coincidence and the only inference that can be drawn is that there was a prior meeting of the minds before the trades were executed and this disturbs the true price discovery mechanism of the exchange.*

37. In view of the aforesaid, it is established that the Noticee aided and abetted the entities belonging to the Mahesh Mistry Group in employing manipulative and deceptive devices of trading such as circular and synchronized trades and cross deals by providing a platform for such trades which led to manipulation of price and creation of artificial demand for the scrip of the company as also a false appearance of trading in the scrip of the company. The acts and omissions of the Noticee facilitated its clients belonging to the Mahesh Mistry Group in manipulating the price of the scrip of the company. Hence, it can be said that the Noticee's actions

and non-actions in this matter has resulted in violation of Regulation 4(2) (a) and (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003.

38. The Noticee is also alleged to have violated Clauses A (1), (2), (3) & (4) of the Code of Conduct for Stock Brokers, specified in Schedule II under Regulation 7 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992. The abovementioned provisions of the said Code of Conduct are quite clear in their import and prescribe certain duties for the broker and stipulate certain norms to which the behavior of the broker must conform while transacting business. The said provisions expressly prohibit the broker from indulging in certain acts which may be detrimental to the interests of the securities market in general and that of investors in particular. The said provisions also cast certain duties on a stock broker. However, in view of my findings, I am of the opinion that the Noticee, as a stock broker, has failed to show high standards of integrity, promptitude and fairness as well as failed to act with due skill, care and diligence in the conduct of business. Based on the observations and findings already explained in the above paragraphs, I am of the opinion that the Noticee has failed to abide by the abovementioned provisions of the said Code of Conduct and thus has violated Regulation 7 read with Clauses A (1), (2), (3) & (4) of the Code of Conduct for Stock Brokers, specified in Schedule II of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992.

ISSUE 2: Whether the Noticee is liable for monetary penalty under Section 15HA and Section 15HB of the SEBI Act, 1992?

39. The provisions of section 15HA and Section 15HB of SEBI Act, 1992 as prevailing at the relevant time is reproduced hereunder :

Penalty for fraudulent and unfair trade practices:

Section 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.

Penalty for contravention where no separate penalty has been provided.-

Section 15HB:

Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.

40. After carefully considering the facts and circumstances of the case and violation committed by the Noticee, I am of the opinion that the Noticee is liable for monetary penalty under Section 15HA and Section 15HB of the SEBI Act, 1992.

ISSUE 3: What quantum of monetary penalty should be imposed on the Noticee, taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

41. While imposing monetary penalty 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."

42. I note that on the basis of data available on record, 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. Further the amount of loss to an investor or group of investors also cannot be quantified on the basis of available facts and data. Even though the monetary loss to the investors cannot be computed, any manipulation in the volume or price of the stocks caused by vested interest always erodes investor confidence in the market so that investors find themselves at the receiving end of market manipulators. Any gullible investor could have been carried away by the unusual fluctuations in price 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. Anyone aiding and abetting carrying out of such transactions which are fraudulent and deceptive, should be suitably penalized for the said acts of omissions and commissions. In fact, nothing can be more serious for a stock broker than to aid and abet manipulative trading and violate the code of conduct. Considering the continuous effort of the Noticee in this aspect where the cross deals and synchronised trades were carried out over a period of time, it can safely be concluded that the nature of default was also repetitive.

43. Considering the facts and circumstances of the case and the material available on record and the violation committed by the noticee, I find that penalty Rs. 15,00,000/- (Rupees Fifteen Lakhs Only) under Section 15 HA and Rs. 10,00,000/- (Rs. Ten Lakhs Only) under Section 15 HB of the SEBI Act will be commensurate with the violations committed by the Noticee.

ORDER

44. After taking into consideration all the facts and circumstances of the case, I hereby impose a penalty of 15,00,000/- (Rupees Fifteen Lakhs Only) under Section 15 HA and Rs. Rs. 10,00,000/- (Rs. Ten Lakhs Only) under Section 15 HB of the SEBI Act (i.e. total penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakhs Only) on the Noticee, M/s. Jitendra Harjivandas Securities Private Limited for violation of the provisions of Regulation 4(2) (a) and (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003 read with Clause A (1), (2), (3) and (4) of the Code of Conduct for Stock Brokers as laid down in Schedule II under Regulation 7 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992.

45. The penalty shall be paid by way of demand draft drawn 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 shall be forwarded to Shri Biswajit Choudhury, Deputy General Manager, Investigation Department (IVD-ID6), Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

46. In terms of the provisions of Rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this Order are being sent to the Noticee and also to Securities and Exchange Board of India.

Date: June 03, 2010 **P. K. Bindlish**
Place: Mumbai **Adjudicating Officer**