BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO.: SD/AO/123 /2009)

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

AGAINST

VIKAS NARNAVAR **PAN: ACRPN6457D**

IN THE MATTER OF

M/S. JIK INDUSTRIES LIMITED

BRIEF FACTS OF THE CASE:

1. On August 2, 2004, there was an article that was published in 'The Financial Express' which cited that a lot of bulk deals were executed in the scrip of JIK Industries Limited (hereinafter referred to as 'JIKIL') on BSE and which interalia referred to circular trading and legalizing unaccounted money. Subsequently, the matter was referred to BSE for investigation by SEBI. BSE had submitted its report on October 11, 2004. Later, even the NSE was asked to initiate investigation for the same period in the dealings of the scrip, which submitted its report on March 16, 2005.

2. After a preliminary investigation at 02 level, the case was approved for initiating formal investigation at 03 level on January 9, 2006. The following paragraph was quoted in the Investigation Report (hereinafter referred to as the 'said report') as a reason for converting the case to 03 level: *'…….. due to lack of cooperation from JIKIL, its promoters/directors, Jagruti Securities Limited (JSL) and the major clients, it has not been possible to collect first hand information regarding the dealings in the scrip of JIKIL. Therefore, in the present circumstances it is not possible to make any definite inferences about the connivance between the promoters/directors and the other entities.'* Thus, so as to gather information regarding circumstances of the deals and conclude the case with more evidences and records, it became imperative to issue summons to JIKIL, its promoters/directors, JSL, the clients and the related entities. Therefore, it was proposed to take up the case for formal investigations.

3. The period of investigation was June 1, 2004 to August 3, 2004 (hereinafter referred to as the 'said period').

4. From the Price Volume Statement for the said period, which is annexed as Annexure B1 and B2 to the said Report in the file, it can be noticed that the scrip has attracted fluctuations in volume.

5. The total traded quantity in the scrip during the period under investigation was 92,42,277 shares at NSE. During the said period the scrip fell from Rs.4 to Rs. 2.80. While at BSE, the total traded quantity in the scrip during the said period was 2,34,85,753 shares. The price fell from Rs.3.95 to Rs.2.80 during the said period.

6. The said Report cites the conclusion in the BSE Report, which reads thus: '*…….. it appears that the Trading member of the Exchange, JSL was in financial crisis and it appears from the number of on and off market transactions that the Director of JIKIL, Mr. Rajendra Parikh along with persons acting in concert with promoters viz., Jagruti R Parikh and JSL may have entered into financial transactions with lots of parties……'.*

7. The last traded price (LTP) analysis done for the said period showed that there was no consistent pattern established and the price fall could not be attributable to any single trading member.

8. After taking into account the Exchange Reports, information was called from the depositories, the company, its promoters/directors, major brokers and clients, both on-market and off-market. Thus, the information acquired from various sources was analyzed to get to the conclusion.

9. As regards the issue of bulk deals, BSE has reported 32 instances of bulk deal reporting in the scrip during the said period. The Exchange has disseminated the same vide its notices. The 0.50% limit for the bulk deal disclosures in the scrip is 1.95 lakh shares. The list of all such bulk deals reported by the BSE trading members as per SEBI directive to the Exchange is annexed as Annexure D to the said Investigation report. Based on such number of bulk deals reported during the said period, investigation was focused on the clients who had traded for more than 0.5% capital of the company during the period with a single counterparty. The client wise summary along with counterparty client details only for those clients where the number of shares traded amongst clients during the entire period had been equal to or exceeded 0.5% of the share capital of the company which is annexed as Annexure E to the said Report.

10. During the said period, these clients had traded amongst themselves 1,25,02,949 shares out of total volume of 2,34,85,753 shares traded which attributes to 53% of the total volume during the said period as can be inferred from the said report. It can be observed that the names of these clients do not appear in the list of shareholders who are holding more than 1% of the equity capital of the company as on June 30, 2004.

11. As regards the issue of off-market deals, the Exchanges in their reports had specified that a lot of off-market transactions were observed among the promoter/persons acting in concert (hereinafter referred to as the 'PAC entities') and the persons who were actively trading in the market including Vikas Narnavar (hereinafter referred to as the 'Noticee'). A number of on and off market transactions were entered into between the promoter entities/PACs with other entities who heavily traded in the scrip.

12. On this account, the demat transaction statements of the entities who had entered into off-market transactions with the promoter/PAC entities were called from the depositories. Following are the demat accounts and their beneficiary owners who were found to be involved in the off-market transactions with the promoter/PAC entities as also amongst themselves wherein the name of the Noticee appears at serial no's 21 & 22 with BO Ids 10080126 & 10112676 respectively.

S. No	D P Name	BO Id	Client Name
1	Standard Chartered Bank	10264251	RAJENDRA GULABRAI PARIKH
2	Standard Chartered Bank	10299348	RAJENDRA G PARIKH
3	Standard Chartered Bank	10264235	JAGRUTI RAJENDRA PARIKH
4	Standard Chartered Bank	10444857	JAGRUTI R PARIKH
5	Stock Holding Corporation of India Ltd	16250083	JAGRUTI SECURITIES LTD
6	ABN AMRO Bank N. V.	10100536	AMEET PARIKH
7	Action Financial Services (India) Ltd	10112300	ASHOK BHAGAT
8	Action Financial Services (India) Ltd	10113394	RAJESH JAGANNATH PANCHAL
9	Action Financial Services (India) Ltd	10113409	RAVI BHAGWANDAS PANCHAL
10	Action Financial Services (India) Ltd	10113847	PRASHANT M. NARVEKAR
11	Action Financial Services (India) Ltd	10112406	PRAKASH A. D'SOUZA
12	Action Financial Services (India) Ltd	10112022	PRASAD SAKHARAM TANDEL
13	Action Financial Services (India) Ltd	10116136	RAJESH S TALEKAR
14	Action Financial Services (India) Ltd	10121628	SICORP FINLEASE LTD
15	Action Financial Services (India) Ltd	10000990	ENPEE ENTERPRISES PVT. LTD.
16	Global Trust Bank Ltd	10078939	SMITA JANAK THACKER

17	HDFC Bank Ltd	40058004	MAHENDRA KUMAR PATODIA
18	Infrastructure Leasing & Financial Services Ltd	10756957	SAYED MUSTAFA
19	Sahara India Financial Corporation Ltd	10045185	RAMESH CHANDRA K. JAIN
20	Sahara India Financial Corporation Ltd	10080087	VIPUL R. JAIN
21	**Sahara India Financial Corporation Ltd**	**10080126**	**VIKAS GOURIHAR NARNAVAR**
22	**Sodhani Securities Ltd**	**10112676**	**VIKAS GOURIHAR NARNAVAR**
23	Standard Chartered Bank	10286017	PRISTINE MARKETING PVT. LTD

13. It is observed from the transaction statements of the said report, that on NSDL a total of 28342084 shares were transferred in the 142 off market transactions amongst parties during June and July 2004. The Investigation Report also noted that there was no off market transaction executed on CDSL. However, it was observed that there were few inter depository transfer entries on CDSL. The details of some of the off-market transactions executed on NSDL which have been taken from the said Report are as follows wherein the name of the Noticee Vikas Narnavar appears at many places in the column of Target Client name opposite entity Ramesh Chandra Jain.

Off-market transactions

EXECUTION DATE	SOURCE CLIENT NAME	TARGET CLIENT NAME	NO. OF SECURITIES
25-Jun-04	RAMESH CHANDRA K JAIN		100000
25-Jun-04	ASHOK BHAGAT	SAYED MUSTAFA	200000
25-Jun-04	**RAMESH CHANDRA K JAIN**	**VIKAS GOURIHAR NARNAVAR**	**200000**
25-Jun-04		RAMESH CHANDRA K JAIN	350000
28-Jun-04	RAMESH CHANDRA K JAIN		100000
28-Jun-04		RAMESH CHANDRA K JAIN	100000
28-Jun-04	**RAMESH CHANDRA K JAIN**	**VIKAS GOURIHAR NARNAVAR**	**300000**
28-Jun-04	RAJENDRA G PARIKH	RAMESH CHANDRA K JAIN	500000
29-Jun-04	PRASAD SAKHARAM TANDEL	ASHOK BHAGAT	100000
29-Jun-04	ASHOK BHAGAT		100000
29-Jun-04	RAMESH CHANDRA K JAIN		100000
29-Jun-04	PRASAD SAKHARAM TANDEL	PRAKASH A D'SOUZA	200000
29-Jun-04	**RAMESH CHANDRA K JAIN**	**VIKAS GOURIHAR NARNAVAR**	**225000**
29-Jun-04	**RAMESH CHANDRA K JAIN**	**VIKAS GOURIHAR NARNAVAR**	**300000**
30-Jun-04	ASHOK BHAGAT		100000
30-Jun-04	RAMESH CHANDRA K JAIN		100000
30-Jun-04		RAJESH JAGANNATH PANCHAL	200000

1-Jul-04	ASHOK BHAGAT	SAYED MUSTAFA	100000
1-Jul-04	RAJESH JAGANNATH PANCHAL	PRASAD SAKHARAM TANDEL	100000
1-Jul-04	RAJESH JAGANNATH PANCHAL	ASHOK BHAGAT	100000
1-Jul-04	ASHOK BHAGAT		100000
2-Jul-04	PRASAD SAKHARAM TANDEL	ASHOK BHAGAT	100000
2-Jul-04	ASHOK BHAGAT	SAYED MUSTAFA	200000
2-Jul-04	**RAMESH CHANDRA K JAIN**	**VIKAS GOURIHAR NARNAVAR**	**200000**
2-Jul-04		RAMESH CHANDRA K JAIN	400000
3-Jul-04	JAGRUTI SECURITIES LTD	PRISTINE MARKETING PVT LTD	100000
3-Jul-04	ASHOK BHAGAT		100000
3-Jul-04	PRISTINE MARKETING PVT LTD	RAMESH CHANDRA K JAIN	150000
3-Jul-04		RAMESH CHANDRA K JAIN	200000
3-Jul-04	RAJENDRA G PARIKH	SMITA JANAK THACKER	400000
5-Jul-04	**RAMESH CHANDRA K JAIN**	**VIKAS GOURIHAR NARNAVAR**	**150000**
6-Jul-04	ASHOK BHAGAT	SAYED MUSTAFA	100000
6-Jul-04	RAJESH JAGANNATH PANCHAL	PRAKASH A D'SOUZA	100000
6-Jul-04	PRISTINE MARKETING PVT LTD	RAMESH CHANDRA K JAIN	100000
6-Jul-04	RAMESH CHANDRA K JAIN	VIPUL R JAIN	100000
6-Jul-04		RAMESH CHANDRA K JAIN	124800
6-Jul-04	RAJESH JAGANNATH PANCHAL	ASHOK BHAGAT	200000
6-Jul-04	**RAMESH CHANDRA K JAIN**	**VIKAS GOURIHAR NARNAVAR**	**235000**
6-Jul-04	PRISTINE MARKETING PVT LTD	RAMESH CHANDRA K JAIN	250000
7-Jul-04	ASHOK BHAGAT	SAYED MUSTAFA	100000
7-Jul-04	RAJESH JAGANNATH PANCHAL	PRAKASH A D'SOUZA	100000
7-Jul-04	**RAMESH CHANDRA K JAIN**	**VIKAS GOURIHAR NARNAVAR**	**100000**
7-Jul-04	RAMESH CHANDRA K JAIN	VIPUL R JAIN	100000
7-Jul-04	ASHOK BHAGAT		100000
7-Jul-04	ASHOK BHAGAT		100000
8-Jul-04	**RAMESH CHANDRA K JAIN**	**VIKAS GOURIHAR NARNAVAR**	**100000**
8-Jul-04	**RAMESH CHANDRA K JAIN**	**VIKAS GOURIHAR NARNAVAR**	**150000**
8-Jul-04	RAJENDRA G PARIKH	RAMESH CHANDRA K JAIN	250000
8-Jul-04	RAJENDRA G PARIKH	RAMESH CHANDRA K JAIN	500000
9-Jul-04	RAMESH CHANDRA K JAIN	VIPUL R JAIN	100000
		Total	28342084

14. The findings of the said Report states that the shares have been initially transferred in off-market by the three promoter entities viz., the Rajendra G Parikh, Jagruti Parikh and JSL to other entities including the

Noticee who have off-loaded the shares in the market. In some cases the Noticee who had received the shares in off market from promoters has first transferred the shares in off market to other entities, who have ultimately off-loaded the shares in the market. The details of only some of such off-market deals as extracted from the said Report are given as under, wherein the BO id of the Noticee Vikas Narnavar viz., 10080126 appears at many places and thus effectively facilitated the offloading by promoter entities.

Rajendra Parikh

Date	From	To	Quantity
11-Jun-04	10299348	10113394	125000
11-Jun-04	10299348	10112300	125000
12-Jun-04	10112022	Market	200000
14-Jun-04	10112300	Market	200000
12-Jun-04	10299348	10444857	24977
14-Jun-04	10444857	Market	24977
12-Jun-04	10299348	10045185	50000
15-Jun-04	10121628	Market	100000
21-Jun-04	10299348	10112300	200000
22-Jun-04	10112300	Market	200000
28-Jun-04	10264251	10045185	500000
28-Jun-04	**10080126**	**Market**	**150000**
9-Jul-04	10112300	Market	50000
19-Jul-04	**10080126**	**Market**	**100000**
20-Jul-04	**10080126**	**Market**	**100000**
21-Jul-04	**10045185**	**10080126**	**80171**
22-Jul-04	10045185	Market	100000
24-Jul-04	10264251	10045185	100000
26-Jul-04	**10080126**	**Market**	**23580**

15. The list of entities who have been found to be involved in the cartel to facilitate offloading by promoter entities as set out in the said report is as follows:

S. No	BO Id	Client Name
1	10113394	RAJESH JAGANNTH PANCHAL
2	10112300	ASHOK BHAGAT
3	10113847	PRASHANT M. NARVEKAR
4	10112022	PRASAD SAKHARAM TANDEL
5	10045185	RAMESH CHANDRA K. JAIN

6	10121628	SICORP FINLEASE LTD
7	10112406	PRAKASH A. D'SOUZA
8	**10080126**	**VIKAS GOURIHAR NARNAVAR**
9	10080087	VIPUL R JAIN
10	10756957	SAYED MUSTAFA
11	10286017	PRISTINE MARKETING PVT. LTD.

16. It is found from the details given on pages 4-5 of this Order and from the findings of the said Investigation Report that it has been the endeavor of the Noticee along with other entities to facilitate substantially the offloading of shares done by the promoters of the company in order to protect the price of the scrip from falling drastically than from what it had already fallen during the said Investigation period from Rs.4 to 2.80 at NSE and from Rs.3.95 to 2.80 at BSE during the said period and thus avoid general investor community know about the off-loading done by the promoters, by roping in other entities including the Noticee Vikas Narnavar along with other such entities who effectively facilitated offloading by promoter entities and thus were involved in the whole cartel. It is also pertinent to note keeping in view the fact that the disclosures about bulk deals do not indicate that it was the promoters of the company who were off loading the shares but the Noticee along with other entities, thus misleading the general investors. It is further noticed from the demat statements of the Noticee and other entities that the opening and closing balances in their accounts were zero. However, during the said period, the Noticee's account showed huge transactions in the scrip owing to transfer of shares from the three promoter entities for subsequent transfer to other entities or for off-loading them in the market which clearly establishes that the Noticee Vikas Narnavar along with others did not have any genuine interest in the scrip and that they were just roped in by the promoter entities in bailing them out for off-loading their holding in the market and also to conceal their identity. Further, the Noticee was also found to be involved in a number of off-market transactions with another entity viz., Ramesh Chandra Jain. The Noticee was found to have received 52.60 lakh shares from Ramesh Chandra Jain in various off market transactions and in turn the Noticee sold 29.29 lakh shares to Ramesh Chandra Jain valued at 81.91 lakhs through market the details of which are annexed to the said show cause notice. Most of these transactions had taken place either on the trading day or a day before/after the trading day. It clearly appears from these transactions that they were not genuine and were fictitious in nature without involving any change in beneficial ownership and led to artificial creation of volume. Thus, the Noticee has violated the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as the PFUTP Regulations).

17. From the information available on record, the said findings of the Investigation Report state that the Noticee along with other entities and promoters/directors of JIKIL have acted hands in glove and have offloaded their shareholdings.

18. As the Noticee Vikas Narnavar allegedly violated Regulations 3 (a), (c), 4 (1) and 4 (2) (a) of the said PFUTP Regulations, the Noticee is allegedly liable for monetary penalty under Section 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act').

APPOINTMENT OF THE ADJUDICATING OFFICER

5. The undersigned has been appointed as the Adjudicating Officer vide order of SEBI dated March 17, 2008 under Section 15I of the SEBI Act read with Rule 3 of the SEBI (Procedure for holding inquiry and imposing penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Adjudication Rules') to inquire into and adjudge under Section 15HA of the SEBI Act, the violation of the provisions of the PFUTP Regulations of 2003.

NOTICE, REPLY AND PERSONAL HEARING

6. A Show Cause Notice dated August 14, 2008 was issued under Rule 4 of the Adjudication Rules to the Noticee asking as to why an inquiry should not be held against them and penalty imposed under Section 15HA of the SEBI Act for their violation of Regulations 3 (a), (c), 4 (1) and 4 (2) (a) of the PFUTP Regulations.

7. The Noticee has filed a reply vide letter dated September 9, 2008 wherein the Noticee had not refuted any allegations made against him in the said show cause notice but stated that he is a small person employed with a chartered accountant firm for 10 years as an office boy and that he had never traded in share market except for 18 months during 2007-2008 and he traded in few scrips wherein the volume was negligible. That he opened his broking account with Asit C Mehta. That his name has been used by Ramnik lal Patel for circular trading purpose who promised him his share of profits if he earned in Noticee's account. That he had taken all proofs from the Noticee to open accounts in the Noticee's name but he did not realize that his account was being misused by that one Mr Ramniklal Patel. That he was totally unaware about what was happening in his account. Till date Ramnik lal Patel had given the Noticee only Rupees 5000-10000 against his commitment to share the profits.

8. An opportunity of personal hearing was granted to the Noticee on October 13, 2008 vide Notice of hearing dated October 1, 2008 to appear at the SEBI Head Office situated at Bandra Kurla Complex, Mumbai. The Noticee had appeared on the scheduled date and reiterated the submissions made in his earlier reply dated September 9, 2008. He had stated that he has never dealt in the securities market earlier and that it appears that Mr.Ramniklal Patel has utilized him as an instrument and opened a demat account using the Noticee's proofs and traded in his name. That Mr.Ramniklal patel promised to pay the Noticee Rs. 1500/- per month for three months, which he stopped paying. Further the Noticee had taken the plea that he is from a poor background and earns a meager amount and thus matter be viewed sympathetically. He had also stated that he would make an application for Consent. Subsequently, vide letter dated November 10, 2008, the Noticee conveyed that he had made consent application. The official communication was received from the Enforcement Department of SEBI about the same vide note dated November 24, 2008, directing the adjudication proceedings pending against the Noticee be kept in abeyance. However, vide note dated September 8, 2009, the Enforcement Department had stated that the adjudication proceedings may be revived as the consent application has been rejected.

9. Subsequently, in the interest of the Principles of Natural Justice, the undersigned had given an opportunity of personal hearing on September 16, 2009 to the Noticee to appear at the SEBI Head Office situated at Bandra Kurla Complex, Mumbai. The Noticee had appeared on the scheduled date and made oral submissions wherein the Noticee took the plea that he is a poor person and to view the matter less seriously considering his financial condition.

CONSIDERATION OF THE ISSUES AND FINDINGS THEREOF

10. I have carefully perused the written submissions and documents available on record. The issues that arise for consideration in the present case are:

    A. Whether the Noticee has violated the provisions of Regulations 3 (a), (c), 4 (1) and 4 (2) (a) of the PFUTP Regulations of 2003 by acting hands in glove with other entities and by heavily trading in the scrip and getting involved in the cartel to facilitate the offloading by promoter entities?

    B. Whether the aforesaid issues after consideration call for monetary penalty?

And

If so, what would be the quantum of penalty that could be imposed taking into consideration various factors relating to their violations?

Issues under the SEBI PFUTP Regulations of 2003:

11. *Regulation 3 of the PFUTP Regulations, 2003 reads thus,* ***Prohibition of certain dealings in securities:*** *'No person shall directly or indirectly- (a) buy, sell or otherwise deal in securities in a fraudulent manner; (b)…….; (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*

12. *Regulation 4 read thus,* ***Prohibition of manipulative, fraudulent and unfair trade practices:*** *(1) 'Without prejudice to the provisions of Regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities. (2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:- (a) indulging in an act which creates false or misleading appearance of trading in the securities market.*

13. On February 24, 2009, Adjudication Orders have been passed against the three promoter entities viz., Rajendra G Parikh, Jagruti Parikh and JSL, for having violated the provisions of PFUTP Regulations, 2003 and also Insider Trading Regulations, 1992 in the same matter.

14. If we look at the table given on pages 4-5 containing the details of the off-market transactions, the name of the noticee appears at many places in the table in the column of target client. Furthermore, looking at the table containing the off market deals, it appears that the Noticee and PAC entities have entered into off-market deals amongst themselves and actively traded in the market. A total of 28342084 shares were transferred in the 142 off market transactions amongst parties during June and July 2004 out of which the Noticee has traded for more than 20 lakh shares in off-market. The list of entities who are involved in the cartel to facilitate offloading by the promoter entities is given on pages 6-7 of this order which contains the name of the Noticee. Therefore the fluctuations in the volume of the scrip are clearly to be attributed to the Noticee, promoter entities and other persons who actively traded in the market.

15. The shares have been initially transferred in off-market by the three promoter entities to Noticee and other entities who have off-loaded the shares in the market. The details of such off-loading of shares are

contained in the tables on page 6 of this Order. Thus, the Noticee along with others have been roped in by the promoter entities to do rest of the off-market transactions, who acted hands in glove with the other entities as is clear from the various tables showing the details which are reproduced in this order. Furthermore, the Noticee was found to be involved in a number of off-market transactions with another entity viz., Ramesh Chandra K Jain. The Noticee was found to have received 52.60 lakh shares from Ramesh Chandra Jain in off market transactions and in turn the Noticee sold 29.29 lakh shares to Ramesh Chandra Jain valued at 81.91 lakhs through market.

16. On a general note, the off market deals are not considered transparent and are not helpful to the price discovery process on the stock exchange mechanism as the price of the scrip might have sudden increase or decrease, which is harmful to the investors' interests. In order to protect the interest of the investors in securities and the capital market by taking suitable measures, it is necessary to inform the stock exchange and make necessary disclosures in the case of such off-market deals, which did not take place in the instant matter.

17. The Noticee Vikas Narnavar and other ten entities whose names are given in the table on pages 6-7, have effectively aided and abetted the promoters/PAC entities in their scheme of off-loading of shares and heavily trading in the scrip so as to not let the prices fall drastically than from what it had already fallen, thereby violated the provisions of the PFUTP Regulations 2003 and thus same would be an unfair trade practice under PFUTP Regulations. The promoter entities hid the personal identity and roped in Noticee and other entities to heavily trade in the scrip and manipulated the price of the scrip, which has been established beyond reasonable doubt as is obvious from the various details reproduced in this Order in tables.

18. I have perused all the documents forwarded along with the written submissions. However, I do not find any merit in the same. Though the Noticee had taken the plea of his poor financial background, the same cannot be taken as a defence as the volume traded by the Noticee is huge compared to others and thus it is a clear case of violation of the PFUTP Regulations of 2003.

19. These facts I can not overlook and in fact viewed it seriously.

20. Therefore, these facts give me enough strength to impose penalty for violating Regulations 3 (a), 3 (c), 4 (1) and 4 (2) (a) of the PFUTP Regulations of 2003.

21. The Hon'ble Supreme Court of India in the matter of *SEBI vs. Shri Ram Mutual Fund*[1] held that *"once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow."*

22. Thus, the aforesaid violations by the Noticee make it liable for penalty u/s. 15HA of the SEBI Act, 1992 which reads thus:

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.

23. While determining the quantum of penalty u/s. 15HA, it is important to consider the factors stipulated in S.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 S.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.

24. In a case of this nature, it is not exactly possible to arrive at definite figures to calculate the gain made by the Noticee, who substantially facilitated the offloading done by the promoters of the company and loss caused to the investors, however, the intention of the Noticee in executing off-market deals along with other promoter entities and persons actively trading in the market by concealing the identity is to not let the prices of the scrip fall drastically than from what it had already fallen during the said Investigation period from Rs.4 to 2.80 at NSE and from Rs.3.95 to 2.80 at BSE during the said period. Assuming the average price of the share during the said period was Rs.3/- then on multiplying such amount with number of shares offloaded by the Noticee who was roped in by the promoters, it certainly tells us that the promoters would have gained hefty amounts by not letting the price of the scrip fall further while off-loading through PACs.

[1] (2006) 68SCL 216 (SC)

As regards the loss caused to investors, had the promoters offloaded directly, the investors would have known about the same and because there were other entities including the Noticee who were off-loading the shares, the investors did not come to know and probably, they would not have bought the shares had they known the promoters were offloading the shares. The Noticee had contributed substantially to the manipulation by aiding and abetting the acts of the promoters. Thus, it is certainly a loss to the investors being ignorant about the same. Thus, these factors need to be considered in imposing monetary penalty.

ORDER:

25. After taking into consideration all the facts and circumstances of the case I come to conclusion that this is a fit case for imposing the monetary penalty against the aforesaid Noticee. I impose a penalty of Rs. 3,00,000/- (Rupees Three lakhs only) on the Noticee viz., Vikas Narnavar in terms of Section 15HA of the SEBI Act, 1992 exercising the powers conferred upon me u/s 15- I (2) of the SEBI Act for violation of Regulations 3 (a), 3 (c), 4 (1) & 4 (2) (a) of the PFUTP Regulations, 2003. I am of the view that the said penalty is commensurate with the violation committed by the Noticee.

26. The penalty shall be paid by way of a duly crossed 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 G Ramar, Deputy General Manager, Investigation Department-3 (IVD-ID3), Securities and Exchange Board of India, Plot no.C4-A, 'G' Block, Bandra Kurla Comlex, Bandra (E), Mumbai- 400 051.

27. In terms of the Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee viz., Vikas Narnavar and also to the Securities and Exchange Board of India. The matter is disposed of accordingly.

DATE: October 23, 2009 **SANDEEP DEORE**

PLACE: Mumbai **ADJUDICATING OFFICER**