BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PB/AO- 17/2011]

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 Marwadi Shares and Finance Ltd.

(Pan No.: AABCM5192K)

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted investigation in the trading in the scrip of M/s Rajoo Engineers Ltd. (hereinafter referred to as **"REL"**) for the period from July 02, 2007 to January 21, 2008 (hereinafter referred to as **"investigation period"**).

2. The findings of the examination led to the allegation that M/s Marwadi Shares and Finance Ltd. (hereinafter referred to as "Noticee") had violated para 8, 9 and 2.2 of the SEBI Circular No. ISD/CIR/RR/AML/1/06 dated January 18, 2006 read with Para 4, sub-clause (c) of Suspicious Transactions Report (Version 1.0)

mentioned under Para 6 of SEBI Circular No. ISD/CIR/RR/AML/2/06 dated March 20, 2006 and consequently, liable for monetary penalty under section 15HB of the SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned has been appointed as Adjudicating Officer vide order dated February 05, 2010 under section 15 I of the SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the **'Rules'**) to inquire into and adjudge under section 15HB of the SEBI Act.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice No. EAD/PB/SS/11186/2010 dated July 02, 2010 (hereinafter referred to as "**SCN**") was issued to the Noticee under rule 4 of the Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15HB of SEBI Act for the violation as alleged in the SCN.

5. It was alleged in the SCN that the transactions executed by the Noticee in the shares of REL on behalf of Nathani Group entities were suspicious transactions which resulted in violation of provisions of para 8, 9 and 2.2 of the SEBI Circular No. ISD/CIR/RR/AML/1/06 dated January 18, 2006. Further, under Para 4, sub-clause (c) of Suspicious Transactions Report (Version 1.0) mentioned under Para 6 of SEBI Circular No. ISD/CIR/RR/AML/2/06 dated March 20, 2006 an intermediary which includes stock broker and sub broker is required to furnish details of suspicious transactions whether or not made in cash which appears to have no economic rationale or

bonafide purpose. It was alleged that the transactions were executed by the Noticee on behalf of Nathani Group entities. It was also alleged that the matching of buy and sell orders placed by the same entities from the same location Ids over such a prolonged period should have attracted Noticee's attention since such trades did not have any economic rationale and should have raised suspicion in the Noticee's mind. However, the Noticee failed to furnish details of suspicious transactions which resulted in violation of Para 4, sub-clause (c) of Suspicious Transactions Report (Version 1.0) mentioned under Para 6 of SEBI Circular No. ISD/CIR/RR/AML/2/06 dated March 20, 2006.

6. The aforesaid SCN was sent to the Noticee through SPAD. The said notice was received and acknowledged by the Noticee on July 09, 2010. Vide letter dated July 21, 2010 Noticee sought extension of time upto August 31, 2010 for replying to the aforesaid SCN. The Noticee replied to the SCN vide letter dated August 30, 2010 and denied the allegations made in the SCN. The Noticee in its reply dated August 30, 2010 *inter-alia stated* :

"

- *Nathani group entities had purchased, aggregating 16,043 shares and consequently sold 16,044 shares aggregating 32, 087 shares of trading. This trading has been the result of 55,458 buy order placed and 32,013 sale order placed aggregating 87,471 total order of placements over 101 trading days during the period July 2007 to December 2007. This fact of their trading pattern, in itself goes to indicate that Nathani group entities have indulged into day trading activity against their shareholding in the nature of day-trading or hedging on all most of all day of 101 trading days during the period July 2007 to December 2007.*
- *It can be seen that only 318 quantity of shares have been alleged to be fictitious trades out of 87,471 total order placements. Therefore, the*

alleged fictitious trades constitutes meager 0.36% of Nathani group trading activity and in our view, would be much less compared to total no. of order placement volume on BSE involving only 318 shares constituting 0.99% against their total trading of 32,087 shares. Therefore, this fact of meager 0.36% trades of Nathani group entities goes to indicate the act, conduct and intention of the entities of Nathani group that 99.645 of their order placement involving meager 0.99% of their trading quantity was not in any manner derogatory to the trades resulting in to increased/maintained/artificially influenced the price of the scrip through such alleged fictitious trades of single shares on many days.

- *Out of 200 alleged fictitious trades, 197 trades were observed to have been executed with traded quantity of 1 share each and 79 trades were observed to have been executed wherein, the time gap between the placement of buy order and sell order was less than a minute signifying simultaneous order. There is nothing unusual as the same is done with a view to taste the water of the scrip. No fault can be found on our part for failure to sense anything.*
- *Out of 200 alleged fictitious trades, 115 trades were observed to be having LTP difference of greater than or equal to 1% while 70 alleged fictitious trades were observed to be having LTP difference of greater than or equal to (-) 1% is in itself signifying the intention on part of Nathani group entities to taste the water of the scrip by free play of the forces of demand and supply on the basis of price discovered and thereby to serve their economic rationale or bonafide purpose of valuation of their shareholding as well as to earn out of trading against their shareholding. Therefore, the fact goes to indicate the act, conduct and intention of the entities of Nathani group comprising 99.64% of their order placement involving meager 0.99% of their shareholding was not in any manner derogatory to the trades that can be said to have resulted in to increased/ maintained/artificially influenced the price of the scrip through alleged*

fictitious trades of single shares on many days but on the contrary goes to show the economic rational and bonafide purpose behind such trades.

- *No violation of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 or violation of aiding and abetting the Nathani group entities has been found against us. Therefore, in light of the fact of no violation of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 it is not convincing to us to view violation of Prevention of Money Laundering Act, 2002. There has been misjoinder of cause and action on part of the Board.*
- *The nature of fraudulent activity alleged to have been undertaken by the entities of the said Nathani group as day traders cannot be said to be fraudulent activity at all on their part as the same was in the nature of testing the water of the scrip. The same cannot be considered as suspicious transactions requiring us to regularly monitor and consequently reporting the same to the Authorities of Anti Money Laundering Act. Therefore, the present proceedings are vitiated and void ab-initio on account of misjoinder of cause and action and therefore have become in-fructuous on account of operation of law.*
- *The matching of trade is the function of online trading system, where as a broker, we do not have any control nor have any role to play. The trading pattern of placing simultaneous buy and sell order for 1 share is generally placed from the same Id depending upon the infrastructure available with the broker. The trading pattern of placing simultaneous buy and sell order for 1 share is not manipulative trade practice. The simultaneous placing order pattern for 1 share has been profoundly practiced by day traders and the same has now been recognized as with an intention to test the water of the scrip. Considering and properly appreciating this widely known fact with respect to online trading system and trading pattern of day traders obviously over consistently and persistently long period of time on daily basis, to form view against us merely on the basis that "from*

the same location Ids over such a prolonged period" appears to be not convincing to us for the alleged transactions.

- *Such nature of transaction conceived with an intention to discover the price on online trading system always carries economic rationale and bonafide purpose for their shareholding in the scrip and considering the quantum of such alleged fictitious trades against their total activity in the scrip over a prolonged period from July 2007 to December 2007, being highly insignificant and virtually negligible, it cannot be said that "should have raised suspicion in your mind. However, you have failed to furnish details of suspicious transactions which resulted in violation of Para 4 sub clause (c) of Suspicious Transaction Report (Version 1.0) mentioned under Para 6 of SEBI Circular No. ISD/CIR/RR/AML/2/06 dated March 20, 2006".*
- *The quantum of alleged fictitious trading against total trading of Nathani group entities is highly insignificant and virtually negligible which could have hardly increased/maintained/artificially influenced the price of the scrip through trades of single share on many days, is in itself contradictory for the charges and allegation with respect to the same has not found to be having any economic rationale or bonafide purpose, though for their purchase of total 16,043 shares and sale of total 16,044 shares during the period under investigation is on record. Even otherwise, while appreciating the data mentioned in the Notice showing "LTP difference of greater than or equal to 1% and LTP difference of greater than or equal to (-) 1% is in itself signifying the intention on part of Nathani group entities to taste the water of the scrip and thereby to enable the price discovery mechanism of the stock exchange to operate in full play to discover price of the scrip by free play of the forces of demand and supply on the basis of price discovered and thereby to serve economic rationale or bonafide purpose of valuation of their shareholding as well as to earn out of trading against their shareholding and under those circumstances we failed to understand how and in what manner the said*

transactions can be treated as suspicious transactions when no major price fluctuation/manipulation has been found between July 02, 2007 and November 30, 2007 requiring our regular monitoring, recording and reporting under the provisions of PMLA for which allegation can be leveled against us.

- *It is not shown that we being the registered intermediary are responsible to monitor and regulate the occurrences of price variation on account of each trade of each client in each scrip on concurrent basis. Further, it is not shown that we being the registered intermediary are responsible to monitor and regulate the occurrences of first trade by the client on account of each trade of each client in each scrip on concurrent basis. It is also not even shown that we being the registered intermediary are responsible to monitor and regulate the trading pattern which is intended to discover the price of the scrip or the occurrences of price variation on account of each trade of each client in each scrip on concurrent basis. …."*

7. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, the Noticee was granted an opportunity of personal hearing on October 13, 2010 vide notice dated September 29, 2010. Mr. Anish Kharidiya, Practicing Company Secretary appeared for the hearing on behalf of the Noticee on October 13, 2010. During the course of the hearing, the submissions made vide letter dated August 30, 2010 were reiterated by the Noticee. The Noticee requested for giving 15 days time for re-substantiating the position of the Noticee in the matter by filing additional written submissions. In addition, Noticee also submitted oral submissions wherein it reiterated and confirmed its position vide letter dated August 30, 2010. Vide letter dated October 25, 2010 the written submissions were filed by the Noticee which reiterated the earlier submissions made vide letter dated August 30, 2010.

CONSIDERATION OF ISSUES AND FINDINGS

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

   a. Whether the transactions executed by the Noticee on behalf of Nathani Group entities were suspicious transactions which resulted in violation of provisions of para 8, 9 and 2.2 of the SEBI Circular No. ISD/CIR/RR/AML/1/06 dated January 18, 2006?
   b. Whether there was a failure on the part of the Noticee to furnish details of suspicious transactions which resulted in violation of Para 4, sub-clause (c) of Suspicious Transactions Report (Version 1.0) mentioned under Para 6 of SEBI Circular No. ISD/CIR/RR/AML/2/06 dated March 20, 2006.
   c. Does the non-compliance, if any, attract monetary penalty under section 15HB of SEBI Act?
   d. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

9. Before moving forward, it is pertinent to refer to the paras of the SEBI Circulars, which reads as under:-

   SEBI Circular No. ISD/CIR/RR/AML/1/06 dated January 18, 2006 -:

   2.2 *As per the provisions of the Act, every banking company, financial institution (which includes chit fund company, a co-operative bank, a housing finance institution and a non-banking financial company) and intermediary (which includes a stock-broker, sub-broker, share transfer agent, banker to an issue, trustee to a trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and any other intermediary associated with securities market and registered under section 12 of the Securities and Exchange Board of India Act, 1992)*

shall have to maintain a record of all the transactions; the nature and value of which has been prescribed in the Rules under the PMLA.

Such transactions include:

- *All cash transactions of the value of more than Rs 10 lacs or its equivalent in foreign currency.*
- *All series of cash transactions integrally connected to each other which have been valued below Rs 10 lakhs or its equivalent in foreign currency where such series of transactions take place within one calendar month.*
- *All suspicious transactions whether or not made in cash and including, inter-alia, credits or debits into from any non monetary account such as demat account, security account maintained by the registered intermediary.*

It may, however, be clarified that for the purpose of suspicious transactions reporting, apart from 'transactions integrally connected', 'transactions remotely connected or related' should also be considered.

8. Monitoring of transactions

8.1 Regular monitoring of transactions is vital for ensuring effectiveness of the Anti Money Laundering procedures. This is possible only if the intermediary has an understanding of the normal activity of the client so that they can identify the deviant transactions / activities.

8.2 Intermediary should pay special attention to all complex, unusually large transactions / patterns which appear to have no economic purpose. The intermediary may specify internal threshold limits for each class of client accounts and pay special attention to the transaction which exceeds these limits.

8.3 The intermediary should ensure a record of transaction is preserved and maintained in terms of section 12 of the PMLA 2002 and that transaction of suspicious nature or any other transaction notified under section 12 of the act is reported to the appropriate law authority. Suspicious transactions should also be regularly reported to the higher authorities / head of the department.

8.4 Further the compliance cell of the intermediary should randomly examine a selection of transaction undertaken by clients to comment on their nature i.e. whether they are in the suspicious transactions or not.

9. *Suspicious Transaction Monitoring & Reporting*

9.1 Intermediaries should ensure to take appropriate steps to enable suspicious transactions to be recognized and have appropriate procedures for reporting suspicious transactions. A list of circumstances which may be in the nature of suspicious transactions is given below. This list is only illustrative and whether a particular transaction is suspicious or not will depend upon the background, details of the transactions and other facts and circumstances:

a) Clients whose identity verification seems difficult or clients appears not to cooperate

b) Asset management services for clients where the source of the funds is not clear or not in keeping with clients apparent standing /business activity;

c) Clients in high-risk jurisdictions or clients introduced by banks or affiliates or other clients based in high risk jurisdictions;

d) Substantial increases in business without apparent cause ;

e) Unusually large cash deposits made by an individual or business;

f) Clients transferring large sums of money to or from overseas locations with instructions for payment in cash;

g) Transfer of investment proceeds to apparently unrelated third parties;

h) Unusual transactions by CSCs and businesses undertaken by shell corporations, offshore banks /financial services, businesses reported to be in the nature of export-import of small items.

9.2 Any suspicion transaction should be immediately notified to the Money Laundering Control Officer or any other designated officer within the intermediary. The notification may be done in the form of a detailed report with specific reference to the clients, transactions and the nature /reason of suspicion. However, it should be ensured that there is continuity in dealing with the client as normal until told otherwise and the client should not be told of the report/suspicion. In exceptional circumstances, consent may not be

given to continue to operate the account, and transactions may be suspended, in one or more jurisdictions concerned in the transaction, or other action taken.

SEBI Circular No. ISD/CIR/RR/AML/2/06 dated March 20, 2006:-

4. Suspicious Transaction Report

The Prevention of Money laundering Act, 2002 and the Rules notified thereunder require every intermediary to furnish details of suspicious transactions whether or not made in cash. Suspicious transaction means a transaction whether or not made in cash which, to a person acting in good faith –

(a) gives rise to a reasonable ground of suspicion that it may involve the proceeds of crime; or

(b) appears to be made in circumstances of unusual or unjustified complexity; or

(c) appears to have no economic rationale or bonafide purpose.

10. Upon perusal of the documents available on record, I find the following:

- The Noticee actively traded in the scrip of REL on behalf of Shahin A Nathani, Najmabanu A Nathani and Hasnain A Nathani (hereinafter referred to as **Nathani Group entities**) for a period of 101 trading days during the period from July 11, 2007 to December 03, 2007.
- The details of the trading concentrations of the Noticee by gross quantity during the period of investigation are as under:-

Member No	Member Name	Gross Purchase	% To Total Qty	Gross Sale	% To Total Qty	Gross Qty	% To Total Qty	Net Purchase	% To Total Qty	Net Sale	% To Total Qty
910	MARWADI SHARES AND FINANCE LTD.	63,909	6.06%	91,631	8.69 %	155540	**7.37%**	0	0.00 %	27,722	17.93%

- The Noticee purchased on behalf of Nathani Group entities a total of 16,043 shares and sold a total of 16,044 shares during the investigation period. The details of total buy & sell orders placed as well as executed by the Noticee on behalf of Nathani Group entities during the investigation period are given as under:

Member Name	**Name**	**Buy Order Placed** (No. of shares)	**Buy orders executed** (No. of shares)	**Sell Order Placed** (No. of shares)	**Sell orders executed** (No. of shares)
Marwadi Shares & Finance Ltd.	Shahin A Nathani (H2031)	15927	7996	18487	7997
	Najmabanu A Nathani (H2305)	6785	1215	3002	1215
	Hasnain A Nathani (H2420)	32746	6832	10524	6832
	Total	**55458**	**16043**	**32013**	**16044**

- Fictitious trades executed by the Noticee on behalf of Nathani Group entities:

  a) A total of 266 trades involving 4113 shares were traded amongst Nathani group entities. Out of these 266 trades, 200 trades involving 318 shares were fictitious trades (the buy client & sell client being the same).
  b) Observations on fictitious trades executed by the Noticee on behalf of Nathani Group entities:

Name of entity	**No of fictitious trades**	**No of days of fictitious trades**	**No. of trades where time diff. between order placement is less than 1 min.**	**No. of fictitious trades with LTP difference of greater than or equal to 1%**	**No. of fictitious trades with LTP difference of greater than or equal to**	**Qty. of shares involved**

					(-)1%	
Shahin A Nathani (H2031)	87	38	33	49	29	101
Najmabanu A Nathani (H2305)	35	17	14	18	15	40
Hasnain A Nathani (H2420)	78	34	32	48	26	177
Total	**200**	-	**79**	**115**	**70**	**318**

From the above table, I find that:

- Out of 200 fictitious trades executed by the Noticee on behalf of Nathani group entities, 197 trades were executed with traded quantity of 1 share each.
- Out of 200 fictitious trades executed by the Noticee on behalf of Nathani Group entities, on 79 trades the time gap between the placement of buy order and sell order was less than a minute.
- Out of 200 fictitious trades, 115 fictitious trades were observed to be having LTP difference of greater than or equal to 1% while 70 fictitious trades were observed to be having LTP difference of greater than or equal to (-)1%.
- Out of these 200 fictitious trades, there were 48 first trades. Out of the 48 first trades, 29 first trades (i.e. on 30 days) were observed to be having LTP difference of greater than or equal to 1% while 18 first trades were observed to be having LTP difference of greater than or equal to (-)1%.

- The details of the fictitious first trades executed by the Noticee on behalf of Nathani Group Entities are given as under:

Name of entity	No of fictitious first trades	No. of fictitious first trades with LTP difference of >= 1%	No. of fictitious first trades with LTP difference of >= (-)1%
Shahin A Nathani	18	17	1
Najmabanu A Nathani	8	1	7
Hasnain A Nathani	22	11	10
Total	**48**	**29**	**18**

ii. Price impact through fictitious trades executed by the Noticee on behalf of Nathani Group entities:

a) trades executed by the Noticee on behalf of Nathani Group entities have increased/maintained/artificially influenced the price of the scrip through fictitious trades of single shares on many days.

b) A consolidated account of all the instances where the trades of Nathani Group entities have resulted in LTP difference of equal to more than +/- 1% is given in the table below:

	Consolidated LTP difference of >=+/- 1% (in Rs.)		
Nathani Group Entities	**>= 1%**	**>= (-)1%**	**Net price impact**
Shahin A Nathani	120.1	-45.15	74.95
Najmabanu A Nathani	57.75	-56.35	1.4
Hasnain A Nathani	158.1	-119.25	38.85
Total	335.95	-220.75	**115.2**

iii. Fictitious trades executed by the Noticee on behalf of Nathani Group entities with positive LTP difference:

a) On a number of trading days during the period July 11, 2007 to December 03, 2007, Nathani Group entities have tried to increase the price of the scrip through fictitious trades of single share. One such

example of positive price impact on October 03, 2007 is given below:

- The last traded price on October 01, 2007 was Rs.54.10. On October 03, 2007, the next trading day, the first trade of the day was a fictitious trade of single share by Shahin A Nathani. It was executed at 9:55:47 AM at a price of Rs.57.9 (7.02% higher than LTP). The buy order quantity for this trade was 1 share. In the next two trades of the day, the price went down to Rs.52.6. Again, at 10:23:43 AM, another fictitious trade of single share was executed by Shahin A Nathani at Rs.55.45 (5.42% higher than the LTP). During the day, 8 fictitious trades were executed by Shahin A Nathani out of which on 5 instances, she has positively impacted the price of the scrip. It was observed that in all these 5 instances, the buy order quantity for the trades was 1 share.

b) In most of the cases of positive LTP impact by trades of Nathani Group entities, buy orders of single share was placed purely for increasing the price of the scrip. A few such examples are given in the table below.

Date	Buy Member Code	Buy client code	BO No	BO Price	BO Qty	BO Time	Sell Client Code	SO Time	Trade Qty	Trade time	Traded Price	LTP
31/07/2007												
Previous BO	258	MS009036	25821000022024600	53.1	100	10:31:22						
BO executed by Nathani Group Entity	910	H2031	91021700020479200	60.5	1	10:35:27	H2031	10:35:20	1	10:35:28	65.45	55.2
18/07/2007												
Previous BO	34	8739	3400700020202202	58.25	200	10:11:44						
Previous BO	910	H2305	91023500000107900	58.3	200	10:13:53						
BO executed by Nathani Group Entity	910	H2305	91023500000108000	63.9	1	10:19:01	H2305	10:18:56	1	10:19:01	63.85	58.3

16/08/2007												
Previous BO	405	42J02	40505400020384900	51.4	50	14:50:56						
BO executed by Nathani Group Entity	910	H2305	91023400000148100	58.9	2	15:06:21	H2305	10:44:12	2	15:06:21	58.9	54.7
24/09/2007												
Previous BO	727	85N13	72709300020127800	53.6	100	12:28:28						
BO executed by Nathani Group Entity	910	H2420	91023400000205200	57.5	1	12:28:52	H2420	12:28:50	1	12:28:52	57.4	53.5

iv. Fictitious trades executed by the Noticee on behalf of Nathani Group entities with negative LTP Difference:

a) I find that on many instances, trades of Nathani group entities have caused negative LTP difference, in most of these cases, whenever buy orders were placed in the system by other entities at a price lower than LTP, within a very small time gap, Nathani Group entities entered a buy order at slightly higher price than other entities and a matching sell order so as to get the trade executed & restrict any further fall in the price.

b) A few such examples are given in the table below:

	Buy Member Code	Buy client code	BO No	BO Price	BO Qty	BO Time	Sell Client Code	SO Time	Trade Qty	Trade time	Traded Price	LTP
09/10/2007												
Previous BO	727	10BR20	72702200020259600	43	500	9:55:20						
Previous BO	34	8739	3400200020345350	45.15	500	9:55:23						
BO executed by Nathani Group Entity	910	H2420	91023600000228500	45.6	1000	10:00:33	H2420	10:00:33	1	10:00:33	45.6	54
17/07/2007												
Previous BO	34	8739	3400700020202080	57.3	200	10:12:44						

BO executed by Nathani Group Entity	910	H2035	91021700020457400	61.3	100	10:26:31	H2035	10:26:32	1	10:26:33	61.3	66.4
18/07/2007												
Previous BO	3	80501	320100024903214	58.1	100	9:57:42						
BO executed by Nathani Group Entity	910	H2035	91023500000107900	58.15	200	10:03:51	H2035	10:03:55	1	10:03:56	58.15	62.8
31/07/2007												
Previous BO	215	C4VA	21503100020156200	54	50	10:55:40						
BO executed by Nathani Group Entity	910	H2031	91021800020511600	55.05	100	10:58:17	H2031	13:11:56	1	13:11:56	56.55	60.5

c) On many instances, I find that whenever the buy orders were placed by the Noticee with an intention to restrict further fall in price of the scrip, the order quantity of such order was high (upto 1000 shares) and during the course of the day, the Noticee kept on updating the orders by periodically increasing the order price & simultaneously reducing the order quantity. This pattern shows that the Noticee had placed such orders first with an intention to restrict fall in the price and subsequently to increase the price of the scrip. Two such instances are explained below:

- On September 10, 2007, buy order no. 91023400000180778 placed by Shahin Nathani was modified 12 times during the day. Initially, the buy order was placed for 200 shares at Rs. 52.05 at 10:18:36 AM. During the course of the day, the order price was increased to Rs.56.15 by increasing the order price by small amounts. 3 fictitious trades were executed vide the same order no. on this day at prices Rs.55.1, Rs.55.25 & Rs.55.8.

- On October 03, 2007, buy order no. 91023700000222048 placed by Shahin Nathani was modified 7 times during the day. Initially, the buy order was placed for 500 shares at Rs. 53.55 at 3:59:40 PM.

During the course of the day, the order price was increased to Rs.54.15 by increasing the order price by small amounts. 2 fictitious trades were executed vide the same order no. on this day at prices Rs.53.55 & Rs.54.05.

d) From the aforesaid pattern of placing buy orders I find that the Noticee had placed on behalf of Nathani Group entities such orders with an intention to restrict a fall in the traded price and subsequently increase the price.

v. Intra-Group trades executed by the Noticee on behalf of Nathani Group entities:

a) Apart from 200 fictitious (self) trades of Nathani Group entities, 62 trades involving 3791 shares were observed between them (excluding fictitious trades). The observations are as under:

- Out of these 62 trades between Nathani group entities, 31 trades involving 2257 shares were observed to be having an LTP difference of greater than or equal to 1%.

- Out of these 31 trades, 21 trades were observed to be having positive LTP difference of greater than or equal to 1% out of which on 11 trades, the time difference between the placement of buy order & sell order was less than a minute.

- Out of these 31 trades, 10 trades were observed to be having negative LTP difference of greater than or equal to (-)1%.

- Out of these 31 trades, in 12 trades, the traded quantity of shares was in single digits.

vi. Synchronized trades executed by the Noticee on behalf of Nathani Group entities during the investigation period:

a) During the investigation period, 91 trades were observed where buy orders and sell orders synchronized by price, time (within a time gap of 1 minute) & quantity were placed involving 9032 shares. The findings of all such trades during the investigation period are as given below:

- Out of these 91 trades synchronized by price, time & quantity, the Noticee on behalf of Nathani group entities are involved in 12 trades involving 538 shares.

- Out of the 12 synchronized trades executed by the Noticee, 1 trade was fictitious trade.

    - On November 06, 2007, Hasnain A Nathani executed a trade of 1 share where he placed the buy order as well as sell order of single share with a time difference of 9 seconds. The trade resulted in a price fall by 1.76% compared to the last traded price.

    - The Noticee executed on behalf of Nathani Group entities fictitious trades.

    - The Noticee placed on behalf of Nathani Group entities buy and sell orders synchronized by price, time (within a time gap of 1 minute) & quantity resulting into trades.

    - Noticee's trades on behalf of Nathani Group entities within the group have also impacted the price of the scrip.

    - By trading on behalf of Nathani Group entities the Noticee have tried to increase/maintain/artificially influence the price of the scrip over a long period through trades of single shares and your trading pattern have collectively caused a net

positive impact of Rs.119.8 in the price of the scrip.

11. The arguments put forward by the Noticee and my findings thereon are as under:

I. *Out of 87,471 total order placements, only 318 shares have been alleged to be fictitious trades. The fictitious trades constitutes meager 0.36% of Nathani group activity and it would be much less compared to total no. of order placement volume on BSE involving only 318 shares constituting 0.99% against their total trading of 32,087 shares.*

II. I am of the view that although the quantity of shares involved in the fictitious trades are 318 shares, such trades were executed over a long period of 88 trading days. The matching of buy & sell orders placed by the same entities resulting into fictitious trades over such a prolonged period can't be considered as unintentional/coincidental. Further, these fictitious trades have also impacted the price of the scrip on a number of occasions.

III. *Out of 200 alleged fictitious trades, 197 trades were observed to have been executed with traded quantity of 1 share each and 79 trades were observed to have been executed wherein, the time gap between the placement of buy order and sell order was less than a minute signifying simultaneous order. There is nothing unusual as the same is done with a view to taste the water of the scrip. No fault can be found on our part for failure to sense anything. 79 trades were observed to have been executed wherein, the time gap between the placement of buy order and sell order was less than a minute signifying simultaneous order. Out of 200 alleged fictitious trades, 115 trades were observed to be having LTP difference of greater than or equal to 1% while 70 alleged fictitious trades were observed to be having LTP difference of greater than or equal to (-) 1%*

is in itself signifying the intention on part of Nathani group entities to taste the water of the scrip by free play of the forces of demand and supply on the basis of price discovered and thereby to serve their economic rationale or bonafide purpose of valuation of their shareholding as well as to earn out of trading against their shareholding. Therefore, the fact goes to indicate the act, conduct and intention of the entities of Nathani group comprising 99.64% of their order placement involving meager 0.99% of their shareholding was not in any manner derogatory to the trades that can be said to have resulted in to increased/ maintained/artificially influenced the price of the scrip through alleged fictitious trades of single shares on many days but on the contrary goes to show the economic rational and bonafide purpose behind such trades.

IV. I am of the view that placing of such transactions in a single share at successively higher rates than the last traded price is highly irregular and the share price had shot up during this period against low trading volumes with no change in the economic fundamentals of the company, and hence the price rise was not justified. From the analysis of details of trades, it shows that there was no general trading interest by investors and trading volumes were low. The method and manner of execution of these deals by the Noticee for the same clients by placing orders of single share at successively higher rates than the last traded price is a manipulative practice which resulted in the price of the scrip going up and were done with a view to set the prices or benchmark the prices at a desired level and influence the investors to invest.

V. *Alleged violations of para 8, 9 and 2.2 of SEBI circular No. ISD/CIR/RR/AML/1/06 dated January 18, 2006 read with Para 4, sub clause (c) of Suspicious Transactions Report (Version 1.0) mentioned*

under Para 6 of SEBI circular No. ISDC/CIR/RR/AML/2/06 dated March 20, 2006 are not attracted considering the facts and trading pattern of Nathani Group entities and cannot be made applicable in the light of conceived trading pattern as to test the water of the scrip.

VI. The Prevention of Money Laundering Act, 2002 (hereinafter referred to as **"PMLA")** has come into effect from July 01, 2005. Necessary Notifications/Rules under the said Act have been published in the Gazette of India on July 01, 2005 by the Department of Revenue, Ministry of Finance, and Government of India. PMLA forms the core of the legal framework put in place by India to combat money laundering. PMLA and rules notified there-under impose obligation on banking companies, financial institutions and intermediaries to verify identity of clients, maintain records and furnish information.

VII. Intermediaries registered under section 12 of SEBI Act should consider the specific nature of its business, organizational structure, and type of customers and transactions etc. when implementing the suggested measures and procedures to ensure that they are effectively applied. The over-riding principle is that they should be able to satisfy that the measures taken by them are adequate, appropriate and follow the spirit of these measure and the requirements as enshrined in PMLA.

VIII. International initiatives taken to combat drug trafficking, terrorism and other organized and serious crimes have concluded that financial institutions including securities market intermediaries must establish procedures of internal control aimed at preventing and impeding money laundering and terrorist financing. The said obligation on intermediaries has also been obligated under PMLA.

In order to fulfill these requirements, there is also need for registered intermediaries to have system in place for identifying, monitoring and reporting suspected laundering or terrorist financing transactions to the law enforcement authorities.

IX. I find that in the present case the quantity of fictitious trades (trades where same entity is the buyer as well as the counter party seller) of Nathani Group was 318 shares, such trades were executed on 200 instances of fictitious trades over a long period of 88 days. Further, out of 200 instances of fictitious trades, on 197 instances, the traded quantity was single share. Thus, such transactions falls under the definition of Suspicious Transactions Report (Version 1.0) mentioned under Para 6 of SEBI Circular No. ISD/CIR/RR/AML/2/06 dated March 20, 2006. The matching of buy and sell orders placed by the same entities from the same location IDs over such a prolonged period should have attracted attention of the Noticee since such trades did not have any economic rational and should have raised suspicion in the mind of the Noticee. The Noticee failed to furnish the details of suspicious transactions which resulted in violation of Para 4, sub-clause (c) of Suspicious Transactions Report (Version 1.0) mentioned under Para 6 of SEBI Circular No. ISD/CIR/RR/AML/2/06 dated March 20, 2006.

X. I have perused the provisions of para 2.2 of the SEBI Circular No. ISD/CIR/RR/AML/1/06 dated January 18, 2006 which provides that Stock-broker shall have to maintain a record of all the transactions; the nature and value of which has been prescribed in the Rules under the PMLA. Such transactions include: all suspicious transactions whether or not made in cash and including, inter-alia, credits or debits into from any non monetary

account such as demat account, security account maintained by the registered intermediary. It may, however, be clarified that for the purpose of suspicious transactions reporting, apart from transactions integrally connected, transactions remotely connected or related' should also be considered. I find that in the present case the quantity of fictitious trades (trades where same entity is the buyer as well as the counter party seller) of Nathani Group was 318 shares, such trades were executed on 200 instances of fictitious trades over a long period of 88 days. Further, out of 200 instances of fictitious trades, on 197 instances, the traded quantity was single share. The Noticee should have maintained the records of such transactions; however, I find that the Noticee did not maintain the record of suspicious transactions. Further, I do not find any evidence produced by the Noticee to indicate that it has taken appropriate steps to enable suspicious transactions to be recognized and maintain a record of such suspicious transaction and have appropriate procedures for reporting suspicious transactions. Thus, I find that the Noticee has violated the para 8, 9 and 2.2 of the SEBI Circular No. ISD/CIR/RR/AML/1/06 dated January 18, 2006. Thus, I do not find merits in the submissions of the Noticee.

12. In view of the foregoing, the allegation of violation of provisions of para 8, 9 and 2.2 of the SEBI Circular No. ISD/CIR/RR/AML/1/06 dated January 18, 2006 read with Para 4, sub-clause (c) of Suspicious Transactions Report (Version 1.0) mentioned under Para 6 of SEBI Circular No. ISD/CIR/RR/AML/2/06 dated March 20, 2006by the Noticee stands established.

13. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) held that *"In our considered*

opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…".

14. Thus, the aforesaid violations by the Noticee make them liable for penalty under 15HB of the SEBI Act, 1992 which read as follows:

> ***Penalty for contravention where no separate penalty has been provided***
> *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."*

15. While determining the quantum of penalty under section 15HB, it is important to consider the factors stipulated in section 15J of the SEBI Act, which reads as under:-

> ***"15J - Factors to be taken into account by the adjudicating officer***
> *While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*
> *(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
> *(b) the amount of loss caused to an investor or group of investors as a result of the default;*
> *(c) the repetitive nature of the default."*

16. It is difficult, in cases of such nature, to quantify exactly the disproportionate gains or unfair advantage enjoyed by an entity and the consequent losses suffered by the investors. I have noted that the investigation report also does not dwell on the extent of specific gains made by the Noticee. Under PMLA it is obligatory on the part of the stock-broker to maintain records of the suspicious transactions. An investigation into money laundering transaction may indicate the trail of such transaction passing through an intermediary. To facilitate

the investigations of such transaction and to have access to records and details for the benefit of the investigating agency, mandatory provisions of these nature are made. SEBI Circular No. ISD/CIR/RR/AML/1/06 dated January 18, 2006 and SEBI Circular No. ISD/CIR/RR/AML/2/06 dated March 20, 2006 was issued for compliance by the intermediaries including stock-brokers and therefore, it was the responsibility of the Noticee to comply with the provisions of the said circulars.

ORDER

17. After taking into consideration all the facts and circumstances of the case, I impose a penalty of ₹25,000 /- (Rupees twenty five thousand only) under section 15HB on the Noticee which will be commensurate with the violations committed by it.

18. The Noticee shall pay the said amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Mr. Suresh Gupta, Chief General Manager, Investigations Department - 7, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

19. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: **February 28, 2011** **PARAG BASU**

Place: **Mumbai** **ADJUDICATING OFFICER**