BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. SP/AO- 15/2011]

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

PEE DEE KAPUR STOCKS AND SECURITIES LTD.
(PAN: AELPK4977J
Address: 801-802, International Trade Tower,
Nehru Place, Delhi -110 019)

DPK STOCK & SECURITIES
(PAN: AACHD9339M
Address: 802, International Trade Tower,
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APM FINANCIAL CONSULTANTS PVT. LTD.
(PAN: AABCA8631R
Address: 801, International Trade Tower,
Nehru Place, Delhi -110 019)

SHIVAM INVESTMENTS
(PAN: ABMPK8540Q
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Nehru Place, Delhi -110 019)

In The Matter of
RADICO KHAITAN LIMITED

FACTS OF THE CASE IN BRIEF

1. An investigation was initiated by the National Stock Exchange Limited (**hereinafter referred to as 'NSE'**) in the trading of the scrip of Radico Khaitan Limited (**hereinafter referred to as 'RKL'**) during the period from July 1, 2006 to August 22, 2006 wherein it was observed that the price of the scrip moved from Rs.149.85 on July 3, 2006 to Rs.160 on August 22, 2006 with a high of Rs.165.80 on August 22, 2006 and a low of Rs.127 on July 21, 2006. NSE also observed that the company also made various favorable announcements during this period and that certain company related entities were dealing in the scrip of RKL. In view of the above, NSE referred the matter to SEBI for consideration.

2. SEBI conducted investigation into the trading in the scrip of RKL during the period from July 1, 2006 to August 22, 2006 (**hereinafter referred to as 'investigation**

period'). It was observed that during the investigation period, RKL made certain corporate announcements which were false / misleading as a result of which a price rise was observed during the patch period from July 21, 2006 to August 22, 2006 wherein the price increased from Rs.127 to Rs.160.

3. Investigations conducted by SEBI revealed that a group of connected/related clients of RKL (hereinafter referred to as **Radico Khaitan Group**) viz. Pee Dee Kapur Stocks and Securities Ltd. (hereinafter referred to as **"PDKSS"**), Shivam Investments (hereinafter referred to as **"SI")**, DPK Stock and Securities. (hereinafter referred to as **"DPKSS"**), APM Financial Consultants Pvt. Ltd. (hereinafter referred to as **"APMFC"**) and Pathik Merchandise Pvt. Ltd. (hereinafter referred to as **"PMPL"**) were dealing in the scrip of RKL during the investigation period. These entities were found to be connected to each other and to RKL in terms of the common addresses, common contact number, off market trades or association through companies of which the individuals are directors.

4. It was also observed from Know Your Client forms of SI and APMFC that Smt. Sushma Kapur is the wife of Shri Devendra Kumar Kapur. Shri Devendra Kumar Kapur is the director of the brokerage firm PDKSS. Therefore, it was alleged that Shri Devendra Kumar Kapur was ultimately managing and controlling brokerage firm i.e. PDKSS as well as clients SI, DPKSS and APMFC. Also, Shri Devendra Kumar Kapur was found to be the introducer for M/s Dhoop Sales Pvt. Ltd (Director: Shailja Saraf) (**hereinafter referred to as "DSPL")** and PMPL. Mr. Devendra Kumar Kapur vide letter dated October 7, 2008 to SEBI also acknowledged that the directors of both the said entities namely DSPL and PMPL were his family friends. Mr. B. D. Naliwal was the common authorized signatory for PMPL as well as DSPL. PMPL was related to RKL as Smt. Shailja Saraf (daughter of Shri Lalit Khaitan – Chairman of RKL) was one of the directors in DSPL. PMPL, vide letter dated March 25, 2008, accepted that PMPL had the common address as that of DSPL, M/s Shape N Style India Private Limited and M/s Signet Suppliers Private Limited namely- House No 6, Pocket -40, C R Park, New Delhi 110019. It was also brought out that Shri Manohar Ram (853, Ali Extension, Gali 7, Badar Pur, New Delhi) was authorized person for dealing in shares on behalf of Shape N Style India, Signet Suppliers and PMPL.

5. From the trading details of the Radico Khaitan Group, it was observed that when there was a decline in the price of the scrip from Rs.149.30 on July 3, 2006 to Rs. 128.75 on August 8, 2006, first trades in the scrip of RKL from July 03, 2006 to August 01, 2006 were executed by the broker PDKSS (on behalf of DPKSS and SI). It was also observed that these first trades were executed at prices ranging between (0.04)% and 19.14% to its previous day's last traded price and for quantities ranging between 1-10 shares. During this period, the broker PDKSS undertook the first trades on 14 days at higher Last Trading Price (hereinafter referred to as "**LTP**") variation (for 5-10 shares) for DPKSS and SI. On 6 of these 14 days i.e. on July 4, 2006, July 12, 2006, July 24, 2006, July 26, 2006, July 28, 2006 and July 31, 2006, the counterparty buyer and seller broker are from the same group (i.e. PDKSS) with SI on one side and DPKSS on the other side. Thus, these first trades, on most of the occasions, were the self trades between DPKSS and SI executed through PDKSS as a broker. Further, only 3-4 trades were undertaken during the day subsequent to these first LTP trades during this period. The subsequent trades were also for a negligible quantity i.e. 5-10 shares. It was thus alleged that SI and DPKSS along-with PDKSS (the broker) were more interested in increasing the price of the shares rather than investing in shares.

6. Further it is alleged that shares were purchased at a higher price daily in the first trades when the same were available at a lower price during the day. It was also alleged that PDKSS, through the first self trades, had attempted to increase the price of shares during the price fall period – July 3 to July 31, 2006 i.e. that the trading pattern was an attempt to support the falling prices of the scrip through these first trades. It was alleged that high LTP variation first trades carried out for related entities /clients were done to prop up the falling share price of RKL when the company was considering issuance of preference shares to FIIs at Rs.159.5.

7. During the period August 2, 2006 to August 22, 2006, PDKSS was sent to have entered into self trades for APMFC, SI, DPKSS and PMPL. From August 8, 2006 onwards, the price of the scrip moved from Rs.135.90 to Rs.160.15 on August 22, 2006 and the volume of traded shares increased from 5-10 shares to 100-5000 shares during this period. However no major LTP variation was observed. The aforesaid findings led to the allegation that PDKSS i.e. the broker and related clients DPKSS, SI, APMFC and PMPL created artificial volumes in the scrip of RKL which led to a significant rise in the share price of the scrip of RKL during the period July 1, 2006 to August 22, 2006, which is alleged to be artificial and was designed to create a false market. PDKSS not only undertook first trades at higher LTP but also the self trades (same buyer and seller broker).

8. APMFC had been given two client codes i.e. AP09 and AP99 (in violation of Unique Client Code) by the broker PDKSS in violation of SEBI circular SMDRP/Policy/CIR-39/2001 dated July 18, 2001. Self Trades were executed by broker i.e. PDKSS on behalf of APMFC. On August 8, 2006, PDKSS has entered into 29 self trades for 3800 shares for client / associate APMFC (using two client codes AP09 & AP99).

9. Cross Trades were executed by broker PDKSS on behalf of related clients - M/s APMFC, SI and PMPL on August 8, 2006, August 9, 2006 and August 21, 2006. It is observed that higher volume of shares was executed when PDKSS was buy as well as sell side (cross trades) compared to less than 100 shares when the counterparty broker was different.

10. The findings of the investigation led to the allegation that the
    a) PDKSS, DPKSS, APMFC, SI and PMPL had violated Regulations 3 (b) and 4(2)(a) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "PFUTP") and consequently, liable for monetary penalty under Section 15HA of the SEBI Act, 1992.
    b) PDKSS had violated Clauses A(1) and (2) of Code of Conduct for Stock Brokers as stipulated in Schedule II under Regulation 7 of the SEBI (Stock brokers and Sub-brokers) Regulations, 1992 and APMFC had violated Clauses A(1) and (2) of Code of Conduct for Stock Brokers as stipulated in Schedule II under Regulation 15 of the SEBI (Stock brokers and Sub-brokers) Regulations, 1992 and consequently, liable for monetary penalty under Section 15HB of the SEBI Act, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

11. I was appointed as Adjudicating Officer vide order dated May 25, 2009 under section 15I of the SEBI Act read with rule 4 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 upon the alleged violations by the said entities under section 15HA and 15HB of the SEBI Act, 1992.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

12. **Entity - PDKSS**

a) In terms of the provisions of Rule 4 of the Rules, a Show Cause Notice AO-3/SP/RKL/184682/2009 dated November 24, 2009 (hereinafter referred to as 'SCN') was issued to the PDKSS to show cause as to why an inquiry should not be held against the PDKSS and penalty be not imposed under section 15HA and 15HB of SEBI Act for the alleged violations specified in the SCN.

b) PDKSS replied to the SCN vide letter dated December 14, 2009 requesting for additional 20 days time to furnish the reply and other required details and information with regard thereto and thus comply with the SCN. PDKSS made submissions vide his letter dated January 04, 2010.

c) In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, PDKSS was granted an opportunity of personal hearing on February 18, 2010, vide notice dated February 1, 2010. PDKSS vide its letter dated February 6, 2010 requested for an adjournment of the personal hearing. SEBI vide its letter dated February 26, 2010 adjourned the date of personal hearing to March 12, 2010. PDKSS vide its letter dated March 02, 2010 again requested for an adjournment of the date of personal hearing. SEBI vide its letter dated March 10, 2010 granted the final opportunity to PDKSS to attend the hearing in respect of the aforementioned matter on March 26, 2010.

d) PDKSS vide its letters dated January 5, 2010, March 27,2010, June 23,2010 and e-mails dated August 18,2010 and August 25,2010 made the following submissions:

1. The trades from July 03, 2006 to August 01, 2006 were executed by them in regular course of business without any knowledge of the actions of the other party dealing with the same broker. It's a contractual obligation of broker to execute trades at same time and price as have been given by the client.
2. The Price of higher LTP is very moderate and in many cases it was merely 2%, 6%, 7%, 13% of the previous day's last traded price and quantity of such trades was very meager ranging in 1-10 shares only.
3. On most occasions (15 out of 21 trades), the said trades were executed between unknown parties in accordance with the trading system of the exchange. All trades are in accordance with trading system where they had no means of knowing counterparty at other sides as trades were executed by several different and independent brokers in many instances.
4. Orders for different clients were put in the system in the pre-opening timing independently without having knowledge of orders of all clients.
5. There is no relationship between PDKSS and the other members of the Radico Khaitan Group.

6. SI and DPKSS are though related clients/associates however these are independent entities with distinct identities and sources of funds.
7. Two client codes were allotted to APMFC for carrying out share transactions in custodian code through IL & FS as settlement obligation of these transactions have to be settled by Custodian directly with NSCCL.
8. PMPL, DSPL, RKL, Shape N Style India Private Limited and Signet Suppliers Pvt Ltd. are independent 3rd parties and have no connection with PDKSS in any manner directly or indirectly. Merely an introduction of PMPL and DSPL to PDKSS by Director, Shri Devendra Kumar Kapur does not classify these entities as related entities. Further the dealing of PDKSS was with Mr. B.D.Nailwal and not with Smt. Shailja Saraf. Smt. Shailja Saraf nor any of her relatives is related to PDKSS in any manner directly or indirectly.
9. Shareholding in PDKSS is held by Mrs Sushma Kapur to the extent of 34.9995%, by Mrs Sapna Kapur to the extent of 34.9995%, by Mr Puneet Kapur to extent of 29.9996% and negligible shareholding is held by 4 other shareholders. Mr Devendra P Kapur, Mrs Sushma Kapur, Mrs Sapna Kapur and Mr. Puneet Kapur are directors in PDKSS. Mr Devendra P Kapur and Mrs Sapna Kapur are the authorized signatories of PDKSS.

e) During the personal hearing, PDKSS was represented by Mr. Devendra Kumar Kapur wherein the representative reiterated the above submissions during the hearing.

13. **Entity - DPKSS**

a) In terms of the provisions of Rule 4 of the Rules, a Show Cause Notice AO-3/SP/RKL/184675/2009 dated November 24, 2009 (hereinafter referred to as 'SCN') was issued to the DPKSS to show cause as to why an inquiry should not be held against the DPKSS and penalty be not imposed under section 15HA and 15HB of SEBI Act for the alleged violations specified in the SCN.

b) DPKSS replied to the SCN vide letter dated December 14, 2009 requesting for additional 20 days time to furnish the reply and other required details and information with regard thereto and thus comply with the SCN. DPKSS made submissions vide his letter dated January 8, 2010.

c) In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, DPKSS was granted an opportunity of personal hearing on February 18, 2010, vide notice dated February 1, 2010. DPKSS vide its letter dated February 6, 2010 requested for an adjournment of the personal hearing. SEBI vide its letter dated February 26, 2010 adjourned the date of personal hearing to March 12, 2010. DPKSS vide its letter dated March 6, 2010 again requested for an adjournment of the date of personal hearing. SEBI vide its letter dated March 10, 2010 granted the final opportunity to DPKSS to attend the hearing in respect of the aforementioned matter on March 26, 2010.

d) DPKSS vide its letter dated January 8, 2010 and e-mails dated August 18,2010 and August 25,2010 made the following submissions:

1. The trades from July 03, 2006 to August 01, 2006 were executed by them in regular course of business without any knowledge of the actions of the other party dealing with the same broker. DPKSS has stated that if other clients of PDKSS (the broker) have placed their orders with the said Broker and the quantity so ordered by said other clients matched with their orders, the same was absolutely beyond control of DPKSS and they no legal right to interfere in the action of other clients of the said Broker namely PDKSS.
2. DPKSS is not connected / related in any manner whatsoever with the other entities of the Radico Khaitan Group and that DPKSS has not, at any point of time, acted in concert, whether directly or indirectly, with any of the said entities during the investigation period.
3. It is wrong to allege that the affairs of the concern are ultimately controlled and managed by Shri Devendra Kumar Kapur as DPKSS is a separate, different and distinct entity having independent functioning.
4. PMPL is an independent third party and DPKSS has no connection to it. APMFC and SI have never acted in concert with DPKSS for any business dealings or trades.
5. The analysis of the data from July 03, 2006 to August 01, 2006, reveals that the price of our 'Buy Trades' as compared to its previous day's last traded price, were very moderate as in many cases, the price was merely 2%, 6%, 7%, 13% of the previous day's last traded price.
6. From the analysis of the data from July 03, 2006 to August 01, 2006, in addition to first trades, DPKSS has not merely purchased; but also sold the shares of "RKL". DKPSS has not done any trades during the period August 02, 2006 to August 22, 2006.
7. The total quantity in all the trades were merely 61 shares for buying of Shares and merely 15 shares for selling of Shares of scrip "RKL" and thus the Quantities of all trades were very meager, ranging in 1-10 shares only.
8. During the entire period under investigation, the total quantity of all trades in the scrip of "RKL" was 186 shares on buy side and 115 shares on the sell side.
9. DPKSS did not have any direct or indirect knowledge with regard to consideration of issuance of preference shares to FIIs at Rs. 159.50
10. DPKSS has made no unusual profit or gain directly or indirectly while trading in the scrip of "RKL" as total quantity traded during the period was negligible and insignificant.
11. DPKSS is a sole proprietorship concern of Mr Devendra P Kapur and Mr Devendra P Kapur is authorized signatory of DPKSS.

e) During the personal hearing, DPKSS was represented by Mr. Devendra Kumar Kapur, Chartered Accountant. In addition to grounds taken in its reply, the representative tried to clarify the following matters during the hearing, which is also reiterated in the written submissions:

ii. There is no relationship between DPKSS and the other members of the Radico Khaitan Group.
iii. The trades entered into by the entity were done in the normal course of business.
iv. The number of shares bought and sold by the entity was very insignificant to manipulate the price.

14. **Entity - APMFC**

a) In terms of the provisions of Rule 4 of the Rules, a Show Cause Notice AO-3/SP/RKL/184673/2009 dated November 24, 2009 (hereinafter referred to as 'SCN') was issued to the APMFC to show cause as to why an inquiry should not be held against the APMFC and penalty be not imposed under section 15HA and 15HB of SEBI Act for the alleged violations specified in the SCN.

b) APMFC replied to the SCN vide letter dated December 14, 2009 requesting for additional 20 days time to furnish the reply and other required details and information with regard thereto and thus comply with the SCN. APMFC made submissions vide his letter dated January 5, 2010.

c) In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, APMFC was granted an opportunity of personal hearing on February 18, 2010, vide notice dated February 1, 2010. APMFC vide its letter dated February 6, 2010 requested for an adjournment of the personal hearing. SEBI vide its letter dated February 26, 2010 adjourned the date of personal hearing to March 12, 2010. APMFC vide its letter dated March 2, 2010 again requested for an adjournment of the date of personal hearing. SEBI vide its letter dated March 10, 2010 granted the final opportunity to APMFC to attend the hearing in respect of the aforementioned matter on March 26, 2010.

d) APMFC vide its letters dated January 5, 2010, March 27,2010, June 23,2010 and e-mail dated August 25,2010 made the following submissions:

1. It is wrong to allege that the affairs of the concern are ultimately controlled and managed by Shri Devendra Kumar Kapur as APMFC is a separate, different and distinct entity having independent functioning. SI and DPKSS are separate and different entities working through our director.
2. APMFC has no knowledge that Shri Devendra Kumar Kapur has introduced PMPL and DSPL to PDKSS and merely such an introduction does not classify these entities as related entities. Neither Smt. Shailja Saraf nor any of her relatives, RKL, Shape N Style India Private Limited and Signet Suppliers Pvt Ltd., is related to APMFC in any manner directly or indirectly.
3. There is no relationship between APMFC and the other members of the Radico Khaitan Group.
4. A different client code was allotted to APMFC by PDKSS for carrying out share transactions in custodian code through IL & FS. Cross trades between the two codes were happened in process of shifting our stock position in scrip 'RKL' from custodian code to non-custodian code.
5. APMFC has not entered into any trades with PMPL. All trades are in accordance with trading system where they had no means of knowing counterparty at other sides.
6. Shares sold by APMFC on August 8, 2006, August 21, 2006 and August 22, 2006 were purchased by APMFC at the prevailing market price in regular course of business and did not result in generation of any unusual profits/gains.
7. APMFC has acted neither as a broker nor as a sub-broker and have just traded in scrip of "RKL".

8. The Directors of APMFC for last financial years are Shri Devendra P Kapur, Mrs Sapna Kapur and Mrs Sushma Kapur. Further only Shri Devendra P Kapur in his capacity as a Director holds 9.75 % beneficial interest in APMFC and Mrs Sushma Kapur is authorized signatory of APMFC.

e) During the personal hearing, APMFC was represented by Mr. Devendra Kumar Kapur wherein the representative reiterated the above submissions during the hearing.

15. **Entity - SI**

a) In terms of the provisions of Rule 4 of the Rules, a Show Cause Notice AO-3/SP/RKL/184682/2009 dated November 24, 2009 (hereinafter referred to as 'SCN') was issued to the SI to show cause as to why an inquiry should not be held against the SI and penalty be not imposed under section 15HA and 15HB of SEBI Act for the alleged violations specified in the SCN.

b) SI replied to the SCN vide letter dated December 14, 2009 requesting for additional 20 days time to furnish the reply and other required details and information with regard thereto and thus comply with the SCN. SI made submissions vide his letter dated January 06, 2010.

c) In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, SI was granted an opportunity of personal hearing on February 18, 2010, vide notice dated February 1, 2010. SI vide its letter dated February 6, 2010 requested for an adjournment of the personal hearing. SEBI vide its letter dated February 26, 2010 adjourned the date of personal hearing to March 12, 2010. SI vide its letter dated March 02, 2010 again requested for an adjournment of the date of personal hearing. SEBI vide its letter dated March 10, 2010 granted the final opportunity to SI to attend the hearing in respect of the aforementioned matter on March 26, 2010.

d) SI vide its letters dated January 6, 2010, March 27,2010, June 23,2010 and e-mail dated August 18,2010 and August 25,2010 made the following submissions:

1. The trades from July 03, 2006 to August 01, 2006 were executed by them in regular course of business without any knowledge of the actions of the other party dealing with the same broker. SI has stated that if other clients of PDKSS (the broker) have placed their orders with the said Broker and the quantity so ordered by said other clients matched with their orders, the same was absolutely beyond control of DPKSS and they no legal right to interfere in the action of other clients of the said Broker namely PDKSS.
2. Price at which trades were executed was also at negative range in addition to being in the positive range. Shares were both sold and purchased by SI. The analysis of the data from July 03, 2006 to August 01, 2006, reveals that the price of our 'Buy Trades' as compared to its previous day's last traded price, were very moderate as in many cases, the price was merely 2%, 6%, 7%, 13% of the previous day's last traded price. Out of 13 trades 11 trades were executed with brokers who were independent, unrelated, distinct and unknown.

3. There is no relationship between SI and the other members of the Radico Khaitan Group.
4. PMPL is an independent 3rd party and SI has not connection with PMPL in any manner directly or indirectly. SI has not entered into any trades with PMPL. All trades are in accordance with trading system where they had no means of knowing counterparty at other sides.
5. SI has no knowledge that Shri Devendra Kumar Kapur has introduced PMPL and DSPL to PDKSS and merely such an introduction does not classify these entities as related entities. Neither Smt. Shailja Saraf nor any of her relatives, RKL, Shape N Style India Private Limited and Signet Suppliers Pvt Ltd., is related to SI in any manner directly or indirectly.
6. It is wrong to allege that the affairs of the concern are ultimately controlled and managed by Shri Devendra Kumar Kapur as SI is a separate, different and distinct entity having independent functioning. APM and DPKSS are separate and different entities working through its director.
7. Shares sold by SI on August 09, 2006, August 21, 2006 and August 22, 2006 were purchased by SI at the prevailing market price in regular course of business and did not result in generation of any unusual profits/gains.
8. SI is a sole proprietorship concern of Mrs Sushma Kapur and and Mrs Sushma Kapur is authorized signatory of SI.

e) During the personal hearing, SI was represented by Mr. Devendra Kumar Kapur wherein the representative reiterated the above submissions during the hearing.

2. This order does not examine or establish any charges against PMPL since PMPL has availed the consent proceedings in terms of SEBI Circular EFD/ED/Cir-1/2007 dated April 20, 2007. The consent proceedings have been disposed off by SEBI vide order no CO/IVD/2054/AO/SP/ 12/2010 dated December 09, 2010.

CONSIDERATION OF ISSUES AND FINDINGS

16. The issues that arise for consideration in the present case are :
    i. Whether PDKSS, DPKSS, APMFC and SI had violated regulation 3(b) and 4(2)(a) of PFUTP?
    ii. Whether PDKSS and APMFC had violated Clauses A(1) and (2) of Code of Conduct for Stock Brokers as stipulated in Schedule II under Regulation 7 & Regulation 15 respectively of the SEBI (Stock brokers and Sub-brokers) Regulations, 1992 ?
    iii. Does the non-compliance, if any, attract monetary penalty under section 15HA and 15HB of SEBI Act?
    iv. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

17. Before moving forward, it is pertinent to refer to the provisions of Regulation 3(b) and 4(2)(a) of the PFUTP Regulations and Regulation 7 & 15 & Schedule II therein under of the SEBI (Stock brokers and Sub-brokers) Regulations, 1992 , which reads as under:

Regulation 3: Prohibition of certain dealings in securities

No person shall directly or indirectly-

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

Regulation 4: <u>Prohibition of manipulative, fraudulent and unfair trade practices</u>

(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;

<u>Stock brokers to abide by Code of Conduct.</u>

7. The stock broker holding a certificate shall at all times abide by the Code of Conduct as specified in Schedule II.

<u>SCHEDULE II -Code of Conduct for Stock Brokers</u>

A. GENERAL

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.*

<u>General obligations and inspection.</u>

15. *(1) The sub-broker shall—*

(a) pay the fees as specified in Schedule III;

(b) abide by the Code of Conduct specified in Schedule II;

(c) enter into an agreement with the stock-broker for specifying the scope of his authority and responsibilities;

(d) comply with the rules, regulations and bye-laws of the stock exchange;

(e) not be affiliated to more than one stock broker of one stock exchange.

<u>SCHEDULE II -Code Of Conduct For Sub Brokers</u>

A. GENERAL

1) *Integrity: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all investment 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 investment business.*

18. On perusal of the SCN, charges made against PDKSS, DPKSS, APMFC and SI and materials available on record, the following is noticed:

a) **RELATIONSHIP BETWEEN THE ENTITIES :**

i. The broker PDKSS had traded on behalf of clients APMFC, SI, PMPL and DPKSS. These entities are related to each other. Mr Devendra P Kapur is a director and authorized signatory in PDKSS. DPKSS is a sole proprietorship concern of Mr Devendra P Kapur and Mr Devendra P Kapur is authorized signatory of DPKSS. Shri Devendra P Kapur in his capacity as a Director holds 9.75 % beneficial interest in APMFC.

ii. Mrs Sushma Kapur is a shareholder (to extent of 34.9%) in PDKSS. Mrs Sushma Kapur is also a director and authorized signatory in PDKSS and

APMFC. SI is a sole proprietorship concern of Mrs Sushma Kapur and and Mrs Sushma Kapur is authorized signatory of SI. Mrs Sushma Kapur is wife of Shri Devendra P Kapur.

iii. Mrs Sapna Kapur is a director in PDKSS and APMFC. Mrs Sapna Kapur is daughter of Mrs Sushma Kapur and Mr Devendra P Kapur.

iv. In view of the above, I do not find any merit in the arguments of the entities that all the above entities i.e. SI, APMFC and DPKSS are separate, different and distinct entity having independent functioning. I find these entities are inter related and are related to broker in terms of common Directors, Shareholders and authorized signatories and relationships.

b) **PRICE MANIPULATION**

i. I observe that the stock price decreased in a steady manner during the period July 03, 2006 to August 07, 2006. I also observe that stock price increased in the period August 08, 2006 to August 22, 2006. The days on which PDKSS and its clients traded actively were August 08, 2006, August 09, 2006 and August 21, 2006 i.e the days of price increase.

ii. I observe that during this period the broker PDKSS undertook the first trades on 14 days at higher LTP variation (for 5-10 shares) i.e. on July 04,05,06, 07, 10, 12, 17, 24, 25, 26, 27, 28, 31 and August 01,2006. Further I observe that on 6 of these 14 days the counterparty buyer and seller broker are from the same group

iii. I observe that though the PDKSS and his clients undertook the first trades on 14 days, I find that on 6 instances (1 instance by DPKSS and 5 instance by SI) prices for the first trades were in between 5-10% of previous day's last traded price, on 3 instances (2 by DPKSS and 1 by SI) prices for the first trades were in between 10-15% of previous day's last traded price and only on 5 instances (3 instances by DPSS and 2 instances by SI) prices for the first trades were in between 15% and above of previous day's last traded price.

iv. I also observe that the buy quantity is very meager (5-10 shares) on each of the above dates and in no instance does the buy quantity seem so high as to influence the price movement. I also observe the number of trades executed by the broker for these trades were very few as compared to the total volume of trades executed during the day. Hence price impact is doubtful

v. Taking into consideration the above and the submissions, I find that the present case does not present any material evidence to establish the alleged manipulative role played by PDKSS, DPKSS and SI in increasing the price of RKL. The mere purchasing of the scrip at a higher price daily in the first trades when the same is available at a lower price during the day, does not lead to a conclusion that PDKSS, DPKSS, APMFC and SI had played a role in the influencing the price of the scrip. The quantities of these trades were very meager and that prices were merely 5% to 19% of the previous day's last traded price. I find that there is no actionable material on record to prove the allegation of price manipulation.

c) **VOLUME CREATION**

i. With regards to allegations that PDKSS along with broker and related clients SI, APMFC and PMPL have created artificial volumes in the scrip of RKL which was designed to create a false market, the following is observed:-

Date	Trade No	Trade Price	Trade Qty	Buy Member Name	Buy Client code	Sell mem Name	Sell Client code
8-Aug-06	200608085192850	130.65	100	PDKSS	AP99	PDKSS	AP09
8-Aug-06	200608085193073	130.65	100	PDKSS	AP99	PDKSS	AP09
8-Aug-06	200608085193260	130.65	100	PDKSS	AP99	PDKSS	AP09
8-Aug-06	200608085193478	130.65	100	PDKSS	AP99	PDKSS	AP09
8-Aug-06	200608085193661	130.65	100	PDKSS	AP99	PDKSS	AP09
8-Aug-06	200608085193782	130.65	100	PDKSS	AP99	PDKSS	AP09
8-Aug-06	200608085193930	130.65	100	PDKSS	AP99	PDKSS	AP09
8-Aug-06	200608085194071	130.65	100	PDKSS	AP99	PDKSS	AP09
8-Aug-06	200608085194392	130.65	100	PDKSS	AP99	PDKSS	AP09
8-Aug-06	200608085194535	130.65	100	PDKSS	AP99	PDKSS	AP09
8-Aug-06	200608085203437	130.55	100	PDKSS	AP99	PDKSS	AP09
8-Aug-06	200608085203730	130.55	200	PDKSS	AP99	PDKSS	AP09
8-Aug-06	200608085204031	130.55	100	PDKSS	AP99	PDKSS	AP09
8-Aug-06	200608085204294	130.55	100	PDKSS	AP99	PDKSS	AP09
8-Aug-06	200608085204588	130.55	100	PDKSS	AP99	PDKSS	AP09
8-Aug-06	200608085204781	130.55	100	PDKSS	AP99	PDKSS	AP09
8-Aug-06	200608085206095	130.55	100	PDKSS	AP99	PDKSS	AP09
8-Aug-06	200608085206221	130.55	100	PDKSS	AP99	PDKSS	AP09
8-Aug-06	200608085206429	130.55	100	PDKSS	AP99	PDKSS	AP09
8-Aug-06	200608085255023	130	390	PDKSS	AP99	PDKSS	AP09
8-Aug-06	200608085255370	130	100	PDKSS	AP99	PDKSS	AP09
8-Aug-06	200608085260751	130	10	PDKSS	AP99	PDKSS	AP09
8-Aug-06	200608085260753	130	100	PDKSS	AP99	PDKSS	AP09
8-Aug-06	200608085260755	130	90	PDKSS	AP99	PDKSS	AP09
8-Aug-06	200608085260976	130	10	PDKSS	AP99	PDKSS	AP09
8-Aug-06	200608085260978	130	100	PDKSS	AP99	PDKSS	AP09
8-Aug-06	200608085273014	130.45	400	PDKSS	AP99	PDKSS	AP09
8-Aug-06	200608085273254	130.45	300	PDKSS	AP99	PDKSS	AP09
8-Aug-06	200608085273456	130.45	300	PDKSS	AP99	PDKSS	AP09
8-Aug-06	200608085313984	129.85	850	PDKSS	AP99	PDKSS	PM01
8-Aug-06	200608085314440	129.85	1,000	PDKSS	AP99	PDKSS	PM01
8-Aug-06	200608085399270	129.85	15	PDKSS	AP99	PDKSS	PM01
8-Aug-06	200608085400261	129.85	500	PDKSS	AP99	PDKSS	PM01
8-Aug-06	200608085400491	129.85	385	PDKSS	AP99	PDKSS	PM01
8-Aug-06	200608085400877	129.85	115	PDKSS	AP99	PDKSS	PM01
8-Aug-06	200608085402600	129.75	1,500	PDKSS	AP99	PDKSS	PM01
8-Aug-06	200608085404803	129.85	77	PDKSS	AP99	PDKSS	PM01
8-Aug-06	200608085497469	136.6	150	PDKSS	AP99	PDKSS	PM01
8-Aug-06	200608085498063	136.6	711	PDKSS	AP99	PDKSS	PM01
8-Aug-06	200608085498086	136.7	938	PDKSS	AP99	PDKSS	PM01
8-Aug-06	200608085498504	136.6	1,900	PDKSS	AP99	PDKSS	PM01
9-Aug-06	200608095983026	138.05	5,000	PDKSS	SI99A	PDKSS	PM01
9-Aug-06	200608095984267	138.05	1,000	PDKSS	SI99A	PDKSS	PM01
9-Aug-06	200608095984859	138.05	2,000	PDKSS	SI99A	PDKSS	PM01
9-Aug-06	200608095985130	138.05	2,000	PDKSS	SI99A	PDKSS	PM01
9-Aug-06	200608095985712	138.05	2,000	PDKSS	SI99A	PDKSS	PM01
9-Aug-06	200608095985992	138.05	2,000	PDKSS	SI99A	PDKSS	PM01
9-Aug-06	200608095986333	138.05	1,000	PDKSS	SI99A	PDKSS	PM01
21-Aug-06	200608215770781	160.5	4,779	PDKSS	SI99A	PDKSS	PM01
21-Aug-06	200608215771753	160.5	196	PDKSS	SI99A	PDKSS	PM01
21-Aug-06	200608215771757	160.5	750	PDKSS	SI99A	PDKSS	PM01
21-Aug-06	200608215771759	160.5	754	PDKSS	SI99A	PDKSS	PM01
21-Aug-06	200608215772069	160.5	1,901	PDKSS	SI99A	PDKSS	PM01
21-Aug-06	200608215772297	160.5	750	PDKSS	SI99A	PDKSS	PM01
21-Aug-06	200608215772300	160.5	199	PDKSS	SI99A	PDKSS	PM01
21-Aug-06	200608215773305	160.5	551	PDKSS	SI99A	PDKSS	PM01
21-Aug-06	200608215773307	160.5	298	PDKSS	SI99A	PDKSS	PM01
21-Aug-06	200608215773691	160.5	95	PDKSS	SI99A	PDKSS	PM01
21-Aug-06	200608215773690	160.5	202	PDKSS	SI99A	PDKSS	PM01
21-Aug-06	200608215773693	160.5	702	PDKSS	SI99A	PDKSS	PM01
21-Aug-06	200608215774027	160.5	400	PDKSS	SI99A	PDKSS	PM01
21-Aug-06	200608215774031	160.5	597	PDKSS	SI99A	PDKSS	PM01
21-Aug-06	200608215774273	160.5	499	PDKSS	SI99A	PDKSS	PM01
21-Aug-06	200608215774275	160.5	500	PDKSS	SI99A	PDKSS	PM01
21-Aug-06	200608215774638	160.5	497	PDKSS	SI99A	PDKSS	PM01
21-Aug-06	200608215774643	160.5	499	PDKSS	SI99A	PDKSS	PM01
21-Aug-06	200608215777708	160.5	151	PDKSS	SI99A	PDKSS	PM01
21-Aug-06	200608215777721	160.45	738	PDKSS	SI99A	PDKSS	PM01
21-Aug-06	200608215778128	160.45	500	PDKSS	SI99A	PDKSS	PM01

Date	Trade No	Trade Price	Trade Qty	Buy Member Name	Buy Client code	Sell mem Name	Sell Client code
21-Aug-06	200608215778130	160.45	499	PDKSS	SI99A	PDKSS	PM01
21-Aug-06	200608215778418	160.45	1,000	PDKSS	SI99A	PDKSS	PM01
21-Aug-06	200608215778570	160.45	1,000	PDKSS	SI99A	PDKSS	PM01
21-Aug-06	200608215778713	160.45	1,000	PDKSS	SI99A	PDKSS	PM01
21-Aug-06	200608215781450	160.45	155	PDKSS	SI99A	PDKSS	PM01
21-Aug-06	200608215782959	160.2	750	PDKSS	SI99A	PDKSS	PM01
21-Aug-06	200608215782961	160.2	245	PDKSS	SI99A	PDKSS	PM01
21-Aug-06	200608215783272	160.2	1,000	PDKSS	SI99A	PDKSS	PM01
21-Aug-06	200608215785421	159.8	5,000	PDKSS	AP99	PDKSS	PM01
21-Aug-06	200608215787007	159.75	4,905	PDKSS	AP99	PDKSS	PM01
21-Aug-06	200608215787831	159.6	4,753	PDKSS	AP99	PDKSS	PM01
21-Aug-06	200608215789671	159.6	204	PDKSS	AP99	PDKSS	PM01
21-Aug-06	200608215789672	159.6	2,396	PDKSS	AP99	PDKSS	PM01
21-Aug-06	200608215790057	159.8	750	PDKSS	AP99	PDKSS	PM01
21-Aug-06	200608215790289	159.8	643	PDKSS	AP99	PDKSS	PM01
21-Aug-06	200608215791831	159.6	1,000	PDKSS	AP99	PDKSS	PM01
21-Aug-06	200608215791974	159.6	100	PDKSS	AP99	PDKSS	PM01
21-Aug-06	200608215792258	159.6	900	PDKSS	AP99	PDKSS	PM01
21-Aug-06	200608215793607	159.6	499	PDKSS	AP99	PDKSS	PM01
21-Aug-06	200608215798845	159.45	668	PDKSS	AP99	PDKSS	PM01
21-Aug-06	200608215799429	159.45	50	PDKSS	AP99	PDKSS	PM01
21-Aug-06	200608215799892	159.45	445	PDKSS	AP99	PDKSS	PM01
21-Aug-06	200608215799894	159.45	545	PDKSS	AP99	PDKSS	PM01
21-Aug-06	200608216031592	158.8	345	PDKSS	SI99A	PDKSS	PM01
21-Aug-06	200608216031594	158.8	113	PDKSS	SI99A	PDKSS	PM01
21-Aug-06	200608216031591	158.7	41	PDKSS	SI99A	PDKSS	PM01
21-Aug-06	200608216032367	158.8	387	PDKSS	SI99A	PDKSS	PM01
21-Aug-06	200608216034043	158.95	1,000	PDKSS	SI99A	PDKSS	PM01
21-Aug-06	200608216035915	158.95	500	PDKSS	SI99A	PDKSS	PM01
21-Aug-06	200608216037381	158.95	500	PDKSS	SI99A	PDKSS	PM01
21-Aug-06	200608216038008	158.95	500	PDKSS	SI99A	PDKSS	PM01
21-Aug-06	200608216046509	158.65	200	PDKSS	SI99A	PDKSS	PM01
21-Aug-06	200608216046831	158.65	56	PDKSS	SI99A	PDKSS	PM01

The summary tabulation broker /client wise is as given below

Date	Client/Broker	Total Traded Volume in the Scrip on NSE	Buy Volume (Nos. of Shares)	Buy % to market volume	No. of shares wrt self/cross deals	Sale Volume	Sale % to market volume
8-8-06	**PDKSS (Broker)**	5,38,952	15,000	2.78%	11941	28,000	5.19%
	APMFC (Client)						
	Client Code (AP99)		15,000	2.78%	3,800- self deals		
	Client Code (AP09)		-	-		15,000	2.78%
	PMPL (Client)		-	-	8141- cross deals with AP99	13,000	2.78%
9-8-06	**PDKSS (Broker)**	3,79,518	15,000	3.95%	15000	30,000	7.9%
	SI (Client)		15,000	3.95%	15,000- cross deals	15,000	3.95%
	PMPL (Client)		-			15,000	3.95%
21-8-06	**PDKSS (Broker)**	7,02,741	55,000	7.82%	47,707	105,000	14.94%
	APMFC (Client)						
	Client Code (AP99)		25,000	3.55%	-	-	-
	Client Code (AP09)		-	-	-	25,000	3.55%
	PMPL (Client)		-	-	22858- Cross deals with AP99	55,000	7.82%
	SI (Client)		30,000	4.26%	24849- cross deal with PMPL	25,000	3.55%

ii. It is observed that on August 08, 2006, broker - PDKSS bought a total of 15,000 shares and sold a total of 28,000 shares. All these Shares were purchased by the broker for client APMFC (using client code AP99). With respect to sales of 28,000 shares by the broker, a total of 15000 shares were sold for again for APMFC (using client code AP09). It is thus pertinent to note that APMFC had bought 15,000 shares (2.78% of total number of shares traded on that day) using the client code AP99 and sold exactly the same quantity of shares i.e. 15,000 shares (2.78% of total number of shares traded on that day) using a different client code (AP09). I thus find that 5.56% of total number of shares traded on that day was done by APMFC on August 08, 2006. Further, for 3800 shares (out of 15000 shares), the buying and the selling client are exactly the same i.e. APMFC. These are trades where the same client is present on both the legs of the transactions. This pattern of trading is known as self trading From the Trade log I also observe that on August 08, 2006, APMFC entered into 29 Self Trades for about 3,800 shares and 12 cross trades with PMPL for a total of 8141 shares. Cross deals are where the deals of 2 clients of the same broker are matched/crossed. Thus on this date, the broker and client indulged in cross deals as well as self deals for a total of 11941 shares (79.66% of the broker total buy quantity and 42.64% of the broker total sale quantity on this date)

iii. Similarly, it is observed that on August 09, 2006, the broker bought a bought a total of 15,000 shares (3.95% of total number of shares traded on that day) & sold a total of 30,000 shares (7.90% of total number of shares traded on that day). All the shares were purchased by the broker for client Shivam Investment. With respect to sales of 30,000 shares, I find that 15000 shares were sold by the broker for the same client i.e. Shivam Investment and residual 15000 shares were sold for another client – PMPL. From the trade log and order log on this date, I find that the broker had executed 7 cross trades for 15000 shares for 2 of its clients – SI and PMPL (100% of the broker total buy quantity and 50% of the broker total sale quantity on this date)

iv. Similarly, it is observed that on August 21, 2006, the broker purchased a total of 55000 shares (7.82% of the total number of shares traded on that day). Of these, 25000 shares were purchased for client APMFC (3.55%) and the remaining 30000 shares for client Shivam Investment (4.26%). From the trade log and order log on this date, I find that the broker has entered into 39 cross deals for 24849 shares among clients SI and PMPL and another 15 cross deals for 22858 shares among clients APMFC and PMPL. Total cross deals quantity works out to 47707 shares (86.74% of the broker total buy quantity and 45.43% of the broker total sale quantity on this date)

SI had bought 30,000 shares (4.26% of total number of shares traded on that day) & sold 25,000 shares (3.55% of total number of shares traded on that day). I thus find that 7.81% of total number of shares traded on that day was done by SI on August 21, 2006.

I also observe that APMFC had bought 25,000 shares (3.55% of total number of shares traded on that day) using the client code AP99 and sold exactly the same quantity of shares i.e. 25,000 shares (3.55% of total number of shares traded on

that day) using a different client code (AP09). I thus find that 7.1% of total number of shares traded on that day was done by APMFC on August 21, 2006.

v. Wrt to the finding of investigation that "higher volume of shares were executed when the broker was on buy as well as sell sides compared to less than 100 shares when the counterparty broker was different", it is also noticed from the trade/order log of these 3 days- August 8,9 and 21, 2006 as under

	No. of trades			**Traded Quantity**		
	Trades for < 100 shares	**Trades for ≥ 100 shares**	**Total**	**Trades for < 100 shares**	**Trades for ≥ 100 shares**	**Total**
Self Trades	18 (8.82%)	186 (91.18%)	204 (100%)	444 (0.6%)	74204 (99.4%)	74648 (100%)
Trades with Other Counterparty Brokers	148 (65.49%)	78 (34.51%)	226 (100%)	3080 (3.1%)	97624 (96.9%)	100704 (100%)

Thus, it is observed that:

a) 204 trades were executed when the broker PKDSS was on the buy as well as sell side. Of these, 18 trades (8.82%) were executed for a volume of less than 100 shares while 186 trades (91.18%) were executed for a volume > 100 shares.
b) On the other hand, 226 trades were executed by PKDSS with other counterparty brokers. Of these, 148 trades (65.49%) were executed for a volume of less than 100 shares as compared to 78 trades (34.51%) for a volume > 100 shares.
c) Higher percentage of volume of shares was executed when PKDSS was on the buy as well as sell side as compared to trades by PDKSS with other counterparty brokers.

In view of the above, I hold that the finding of investigation to this extent is correct and valid.

vi. From the analysis above, it is amply clear that PDKSS and his clients PMPL, SI and APMFC which are inter-related had entered into cross trades amongst each other. I also observe that APMFC had entered into Self-trades during the period under investigation. From the instances of cross trades executed amongst inter-related clients of PDKSS I observe that each of clients had contributed to more than 5% of total number of shares on each of the occasions i.e. APMFC had contributed to 5.56% and 7.1% of total number of shares traded on August 08, 2006 and August 21, 2006 respectively and SI had contributed to 7.90% and 7.81% of total number of shares traded on August 09, 2006 and August 21, 2006 respectively. Further the quantum of self /cross deals by the broker as a percentage of total transactions undertaken by him on these dates is also significant (ranging from 45% to 100%) thus indicating that the broker carried out its trades largely in the nature of self/cross deals and thereby establishing the volume creation done by the broker /clients in the scrip.

vii. The pattern of trading clearly points out that the transactions were carried out with the intention that the orders of particular client and brokers matched and there was a prior arrangement with respect to these large number of transactions.

The transactions resulted in creation of artificial volume. No unknown persons can trade continuously with each other by putting orders in such pattern contributing significantly to total volume in the market. This shows that the clients who were related / connected to each other were trading with each other through self and cross deals with the knowledge of the brokers. Also such type of contribute to the market volume, do impact price movement and volatility in stock markets. Others in the market get the impression that these are genuine prices of the scrip whereas this is not the fact.

viii. I am of the view that it cannot be a mere coincidence that every time, the broker acted in complete ignorance and on behalf of its client, as claimed by the entities (PDKSS, APMFC & SI). The entities (PDKSS, APMFC & SI) by participating in the trading in this manner involved created artificial liquidity in the scrip and played a role in the manipulation of the trading. In my view, the entities (PDKSS, APMFC & SI) through the said artificial trades interfered with the market equilibrium and thereby affected the manipulation of price and volume of the said scrips. The trades executed herein by the entities (PDKSS, APMFC & SI) were not the real trades as there was no intention to change the beneficial ownership. When the trades were inherently non genuine, I do not feel that it is necessary to prove that investors had, in fact got induced and bought and/ or sold on the basis of these trades. Similar views were expressed by the Hon'ble SAT in its order dated 14.7.2006 in Ketan Parekh Vs. SEBI wherein it had observed that *"When a person takes part in or enters into transactions in securities with the intention to artificially raise or depress the price he thereby automatically induces the innocent investors in the market to buy /sell their stocks. The buyer or the seller is invariably influenced by the price of the stocks and if that is being manipulated the person doing so is necessarily influencing the decision of the buyer / seller thereby inducing him to buy or sell depending upon how the market has been manipulated. We are therefore of the view that inducement to any person to buy or sell securities is the necessary consequence of manipulation and flows therefrom. In other words, if the factum of manipulation is established it will necessarily follow that the investors in the market had been induced to buy or sell and that no further proof in this regard is required. The market, as already observed, is so wide spread that it may not be humanly possible for the Board to track the persons who were actually induced to buy or sell securities as a result of manipulation and law can never impose on the Board a burden which is impossible to be discharged. This, in our view, clearly flows from the plain language of Regulation 4(a) of the Regulations."*

In this connection, the observations of the Hon'ble Securities Appellate Tribunal in the order dated September 18, 2003 passed in the case of Madhukar Sheth Vs SEBI (Appeal No.46 of 2002) deserves necessary mention.

"Before executing a series of transactions for his client, any prudent broker would have gone a bit far to ascertain the goings around ……..

…….. Exercise of due diligence in ongoing transactions is a continuous process and it is not a one time measure to be adhered to while taking up the first transaction.

……..On the basis of the material available on record, it was difficult to conclude that the appellant had exercised due skill and care in dealing with 'B'. It was not that the appellant had carried on only few trade transactions for 'B' for a short period. He had transacted in huge volumes for 'B' and the association dated back to August 2000. If the appellant could

not see any design or pattern in the transactions which 'B' was executing through the appellant during the period, then the appellant certainly deserved to be blamed for being indifferent and unconcerned and for that reason he was at fault for the failure to exercise due skill and diligence…….

……It is true that a broker cannot act of his own against the instructions of the client. But no one can compel him to be a party to manipulate the market. No doubt a broker is supposed to protect the interest of his client, but he is also expected to protect the interest of the securities market in which he operates. It is his duty to ensure not to be a party to any market manipulation and that the market in which he operates is run on a health and non-manipulative basis"

ix. The Hon'ble SAT in *Ketan Parekh Vs. Securities & Exchange Board of India* (Appeal No. 2 of 2004) held that in order to find out whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available. In the case of *Ashok K Chaudhary v SEBI*, Appeal No 69 of 2008, dated November 5, 2008, the Hon'ble SAT observed that large number of reverse trades raises a presumption of manipulative transactions.

x. In this regard I would like to rely upon the Judgement of Hon'ble SAT in the matter of Chaitanya P Route Vs SEBI (Appeal No 263 of 2009, Date of Decision. 13.01.2010), the observation of Hon'ble SAT *inter alia* as under :

"…. *Circular trades in the manner in which the appellant executed cannot be carried* out *unless there is connivance between the clients and the brokers. Not only did the appellant execute circular trades, he also reversed his trades with the counter party.*

xi. The method and the manner in which the trades were executed are the most important factors to be considered in these circumstances. The motive, thereafter, automatically falls in line. Trades like cross deals and self trades are all executed on the trading screen of a stock exchange and with proper delivery versus payment system. Clearly in almost all the deals, the orders are placed so as to ensure a matching of the buy and the sell quantity and the buy and the sell price with the counter party, with whom a prior tacit understanding exists. This is what has transpired in the present case. Although the matching of these trades has been attributed to coincidence, this trend was not noted in a solitary incident or two. Instead, a large number of trades got matched regularly, that too only between the same set of brokers and the same set of clients in the same scrip, during the same period. The regularity with which these clients and their brokers were counter-parties, leads one to conclude, that these transactions were effectively meant to be matched. 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 RKL in a way that was not the market determined volumes, in order to induce other persons to invest in the said scrip.

xii. The fact is that had the aforesaid discussed trades been executed in the normal course of business, such perfect matching would not have been possible. The entities (PDKSS, APMFC & SI) had traded extensively only with an identified set of brokers and clients in the scrip of RKL. It is quite evident that these trades

were entered into with the tacit understanding amongst all the entities (PDKSS, APMFC & SI) (one broker and same set of inter related clients), which ensured a semblance of trading activity in the manner discussed earlier, during the investigation period which was earlier not observed. Clients' trades of such magnitude are left undone, and generally cannot take place without the broker being party to it. Moreover had the situation contemplated some other set of individuals and were there some other clients/brokers, this would have eroded or nullified the extent of the allegations. But the fact that majority of trades were done between the same group of entities, gives rise not merely to an assumption of their acting in concert but a definite finding that there was an element of intent while executing the said deals, precipitated due to a mutual understanding which aspect can be pointed out by any layman / an ordinary investor, leave alone the regulatory authorities. The acts of the entities speak of their intentions. In case an entity is alleged to have manipulated the market or distorted the market equilibrium in terms of the PFUTP Regulations and their acts are corroborated up to a certain extent by the investigation findings, then the underlying intention of the said entity is brought out. These facts being as they are, the entities (PDKSS, APMFC & SI) cannot claim ignorance of the dealings of their clients or even the nature of trades executed in such magnitude by the clients in the scrip of RKL. An element of doubt/suspicion ought to have arisen at least in the case of self and cross deals. The quantum, number and quantity of such trades as detailed earlier are a pointer to some inbuilt component of 'intent' involved. A trade can be executed on the screen and still be manipulative in nature. Considering the number of such trades, it is clear that there has been a gross misuse of the screen based trading system. It is also to be stated that "intention" is inherent in all cases of circular, reversal and synchronized trading involving large scale price manipulation and the same was also brought out in the earlier cited case of *Nirmal Bang Securities (P) Ltd. vs SEBI* by the Hon'ble SAT whereby it was observed that *"Intention is reflected from the action of the Appellant."* Thus, the very act of manipulation of the scrip of RKL on the part of the entities (PDKSS, APMFC & SI) revealed in its acting in tandem with each other reveals the inherent intention of manipulating the said scrip.

xiii. On a cumulative analysis of the facts mentioned above, it is clear that the modus operandi of the client of the Broker (PDKSS) to manipulate the trading in the scrip of RKL in a concerted manner was effected largely in the following manner:
   a) Both buy and sale orders of same quantity at the same price which led to creation of artificial volume resulting in price rise in the said scrip.
   b) Parties to the transactions are known to one another.

xiv. The pattern of trading of the entities (PDKSS, APMFC & SI) creates doubts about the genuineness of their trades. I am of the view that the trades carried out were fraudulent and manipulative in nature. In order to establish the fraudulent nature of trades indulged in by the entities (PDKSS, APMFC & SI), reference may also be made to the definition of fraud laid down in regulation 2 (1) (c) of the PFUTP Regulations, which reads as follows:

"2 (1)(c) "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, … …"

xv. Regulation 4(2)(a) of PFUTP Regulations prohibits a person from indulging in an act which creates false or misleading appearance of trading in the securities market. As detailed above, the acts of the entities (PDKSS, APMFC & SI) clearly created false and misleading appearance of trading in the shares of RKL and it did not act in a bonafide manner. The facts of the case highlight the entities (PDKSS, APMFC & SI) involvement, by execution of self as well as cross trades in a substantial manner, in the manipulation of volume of the shares of RKL which led to creation of artificial volumes and misleading appearance of trading in the said shares on account of collusive activities with the entities as discussed in the preceding paragraphs. There does not appear to be any genuine trading interest in the scrip, interalia resulting in violation of the provisions of regulations 3(b) and 4(2)(a) of the regulations.

xvi. In terms of Clauses governing the Code of Conduct prescribed under the provisions of Brokers Regulations, a stock broker shall not, inter alia, create false market or indulge in any act detrimental to the investors' interest or which leads to the interference with the fair and smooth functioning of the securities market. The Broker shall also maintain high standards of integrity, promptitude and fairness and shall act with due skill, care and diligence in the conduct of his business. It also mandates that the Broker shall not, inter alia, indulge in manipulative transactions with a view to distort the market equilibrium. The self and cross of the broker as explained hereinabove in detail establishes that the same created a misleading appearance of trading and artificial volume in the shares of RKL. It further shows that the Broker had failed to exercise due skill, care and diligence and not maintained high standards of integrity, promptitude, fairness in the conduct of business as a stock broker.

xvii. Generally, cross deals and circular trades are the instruments/tools employed by some unscrupulous elements in the securities market to manipulate the market and deceive the general/genuine investors in the market place. The pattern of trading, behavior of the entities, apparent irregularities and the available trading data, etc., prove manipulation which always depends on inferences drawn on a mass of factual detail. When all of these are considered together, they can emerge as ingredients to prove the manipulative scheme designed and executed by such manipulators with intent to tamper with free market forces.

xviii. In view of the foregoing, the allegation of violation of provisions of regulations 3(b) and 4(2)(a)of PFUTP Regulations, Clauses A(1), A(2) of Code of Conduct for Stock Brokers as specified in Schedule II under Regulation 7 of Brokers Regulations by the broker (PDKSS) and regulations 3(b) and 4(2)(a)of PFUTP Regulations, Clauses A(1), A(2) of Code of Conduct for Stock Brokers as specified in Schedule II under Regulation 15 of Brokers Regulations by the sub broker viz. APMFC stands established.

d) **ALLOTMENT OF MULTIPLE CLIENT CODES**

i. It is observed that the broker PDKSS, had given its client - APMFC, two client codes i.e. AP09 and AP99. This has been alleged to be in violation of SEBI Circular SMDRP/Policy/CIR-39/2001 dated July 18, 2001. The relevant extract of the provisions of the same are given below:

> SEBI Circular SMDRP/PoIicy/CIR-39/2001 Dated July 18, 2001
> ***"... it will be mandatory for all brokers to use unique client codes for all clients***. *For this purpose, brokers shall collect and maintain in their back office the Permanent Account Number (PAN) allotted by Income Tax Department for all their clients. Sub-brokers will similarly maintain for their clients"*

ii. When queried on the matter, broker stated that a different client code was allotted to APMFC by PDKSS for carrying out share transactions in custodian code through IL & FS because settlement obligation of custodian trades are mandatorily required to be settled by custodian directly with NSCCL. It was further stated by APMFC vide letter dated 27/3/2010 that code AP09 was exclusively allotted for custodian trades and code AP99 was allotted exclusively for non custodian trades.

iii. I find there is no evidence given by broker or APMFC (client also a sub-broker) to substantiate the contentions made by them in this regard. APMFC submitted vide letter dated 27/3/2010 copies of some unsigned documents purportedly being contract notes /bills for some other transactions However, apart from being unsigned, these documents do not establish the contentions of the broker /APMFC. No tangible reasons for the transactions /allotment of 2 client codes have been brought out for either by the broker or client for allotment /transacting in 2 client codes at the same time. Once the custodian code is allotted, there does not seem to be any reason to undertake /continue transactions through non-custodial codes. I do not find any merit in the arguments made by the broker and APMFC that multiple client codes were allotted by PDKSS to APMFC for settling custodian trades separately. It has also been submitted that the above allotment of 2 client codes was informed to the NSE; however, no evidence in this regard has been furnished. There is no communication furnished which evidences allotment of Custodian Participant (CP) to the broker /client.

iv. I further find that the broker and client have entered into several cross and self deals using the multiple client code. Details in this regard have been brought out in the previous sections of this order.

v. As stated earlier, the client is also a sub broker. Hence the provisions of SEBI Act and Regulations and circulars framed there under as applicable to a broker are also applicable to it. The sub broker should also have been aware of the prohibition of having multiple client codes. By undertaking transactions especially self and cross deals, the sub broker is also in violation of the Regulations elucidating code of conduct for a sub broker.

vi. Therefore, I hold that the allegation of violation of SEBI Circular SMDRP/Policy/CIR 39/2001 dated July 18, 2001 against the broker and the sub

broker – APMFC stands established. I also find that PDKSS and APMFC have not exercised due skill, care and diligence in the conduct of their business in their capacity as broker and sub-broker respectively by allotment of multiple client code and using the same for carrying out trades in scrips of RKL and not for settling custodian trades. I thus find PDKSS and APMFC guilty of violation/contravention of provisions of Clauses A(1) & (2) of Code of Conduct for Stock Brokers as stipulated in Schedule II under Regulation 7 and Regulation 15 of the SEBI (Stock brokers and Sub-brokers) Regulations, 1992.

19. Thus, the aforesaid violations by the entities (PDKSS, APMFC & SI) make them liable for penalty under Section 15HA and Section 15HB of SEBI Act, 1992 which read as follows:

> ***"Penalty for fraudulent and unfair trade practices***
> *15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*
>
> ***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."*

20. While determining the quantum of penalty under section 15HA and 15HB, 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."*

21. 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…".*

22. It is difficult, in cases of such nature, to quantify exactly the disproportionate gains or unfair advantage enjoyed by an entity and the consequent losses suffered by the investors. I have noted that the investigation report also does not dwell on the extent of specific gains made by the clients or broker. Suffice to state that keeping in mind the practices indulged in by the entities, gains per se were made by the entities in that it traded in the scrip in a manner meant to create artificial volumes and liquidity which is an important criterion, apart from price, capable of misleading the investors while making an investment decision. In fact, liquidity/volumes in particular scrip raise the issue of 'demand' in the securities market. The greater the liquidity, the higher is the investors' attraction towards investing in that scrip. Hence, anyone could have been

carried away by the unusual fluctuations in the volumes and been induced into investing in the said scrip. Besides, this kind of activity seriously affects the normal price discovery mechanism of the securities market. Trades were executed primarily with a view to artificially increase the trading volumes in the scrip of the Company. Artificial increase in the volumes of a scrip has the adverse effect on the innocent investors of the market who get induced to buy the shares because they seldom have knowledge about the scrip and follow the herd mentality while trading. People who indulge in manipulative, fraudulent and deceptive transactions, or abet the carrying out of such transactions which are fraudulent and deceptive, should be suitably penalized for the said acts of omissions and commissions. Considering the continuous effort of the entities in this aspect where the self trades were carried out over a period of time, it can safely be surmised that the nature of default was also repetitive. The functioning of the broker and the sub broker with total disregard to the requirements of statutory obligations leads to the conclusion that it has sought to take unfair advantage and gained at the cost of the investors.

ORDER

23. In view of the foregoing, the alleged violation of the provisions of PFUTP Regulations and SEBI (Stock brokers and Sub-brokers) Regulations, 1992 Regulations by DPKSS, as specified in the SCN does not stand established and the matter is, accordingly, disposed of.

24. After taking into account all the facts and circumstances of the case, I impose penalty of Rs.1,00,000/- (Rupees one lakh) on PDKSS, Rs. 75,000/- (Rupees seventy five thousand) on APMFC and Rs. 50,000/- (Rupees fifty thousand) on SI under Section 15HA of SEBI Act, 1992. I also impose a penalty of Rs.75,000/- (Rupees seventy five thousand) on PDKSS and Rs.50,000/- (Rupees fifty thousand only) on APMFC under Section 15HB of SEBI Act, 1992 .

25. I am of the considered view that the said penalty is commensurate with the violations committed by the entities.

26. PDKSS, APMFC and SI shall pay the said amount of monetary penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Ms. Medha Sonparote, Deputy General Manager, Investigation Department, SEBI, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

27. In terms of rule 6 of the Rules, copies of this order are sent to DPKSS, PDKSS, APMFC and SI and also to the Securities and Exchange Board of India.

Date: **July 11, 2011**
Place: **Mumbai**

SANJAY C. PURAO
ADJUDICATING OFFICER