

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. PG/AO - 96/2011]**

**UNDER RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA
(PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES
BY ADJUDICATING OFFICER) RULES, 1995**

**In respect of
M/s. V & S Intermediaries
(PAN. ABMPB3581C)**

**In the matter of
M/s. Adani Exports Limited (Now known as Adani Enterprises Ltd)**

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted investigation into trading in the scrip of Adani Enterprises Ltd. (hereinafter referred to as “**AEL/ scrip**”) for the period from November 27, 2003 to December 23, 2003 (hereinafter referred to as “**investigation period**”) due to sharp rise in price and volume of the scrip on National Stock Exchange of India Ltd. and Bombay Stock Exchange Ltd. (hereinafter referred to as “**BSE**”). Prior to September 20, 2006, AEL was known as Adani Exports Ltd.

The role of the brokers, sub-brokers and their clients who had traded in the scrip was scrutinized during the investigation. It was observed that certain entities had indulged in synchronized reversal trading/fictitious trading in the shares of AEL in such a manner that led to creation of artificial volume and impacted the price of the scrip. The entities found to have been involved in the alleged manipulation are as under:-

Entities which traded on BSE

S. No.	Name of Broker	Name of Sub-broker	Name of Client
1	ASE Capital Markets Ltd	Rajendra J Shah	V&S Intermediaries
2	ASE Capital Markets Ltd	ESS ESS Intermediaries Pvt. Ltd	Samir P Shah
3	ASE Capital Markets Ltd	Rajesh N Jhaveri	Falguni Shah
4	Naman Securities & Finance P Ltd	---	ESS ESS Intermediaries Pvt. Ltd
5	Mangal Keshav Securities Ltd	E Stocks Inc.	Dilip Champalal Jain
6	Vijay Bhagwandas Shah	---	Own/director's account
7	Sanchay Fincom Ltd	---	Tejas Ghelani

2. It was alleged that one of the entities, M/s. V & S Intermediaries (hereinafter referred to as “**Noticee**”) 601, Parshwa Towers, 132 Ft. Ring Road, Satellite, Ahmedabad – 380 051 who had traded in the scrip of AEL through M/s. Rajendra J Shah (hereinafter referred to as “**R J Shah**”), sub-broker of M/s. ASE Capital Markets Ltd., (hereinafter referred to as “**ACML**”) a broker of BSE had violated the provisions of regulations 4 (1), 4 (2) (a), (b), (e), (g) and (n) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”) and therefore, liable for monetary penalty under sections 15HA and 15HB of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”). Mr. Saumil A. Bhavnagari is the proprietor of the Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

3. I have been appointed as Adjudicating Officer vide order dated December 14, 2005 under section 15 I of SEBI Act read with rule 3 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as

“Rules”) to inquire into and adjudge the alleged violations of the provisions of PFUTP Regulations.

Consequent upon my transfer, Mr. V.S. Sundaresan was appointed as the Adjudicating Officer vide Order dated November 19, 2007. Consequent upon the transfer of Mr. V.S. Sundaresan, I have been appointed as Adjudicating Officer vide order dated November 12, 2009.

SHOW CAUSE NOTICE, HEARING AND REPLY

4. Show Cause Notice dated May 31, 2006 (hereinafter referred to as “SCN”) was issued to Noticee under rule 4 (1) of the Rules to show cause as to why inquiry should not be held and penalty be not imposed under sections 15HA and 15HB of SEBI Act for the violation of provisions of regulations 4 (1), 4 (2) (a), (b), (e), (g) and (n) of PFUTP Regulations. No reply was received to the SCN.

Vide hearing notice dated August 12, 2009 the Noticee was given an opportunity of personal hearing on August 25, 2009. Noticee vide letter dated August 21, 2009 sought for adjournment of personal hearing. Another opportunity of personal hearing was granted to Noticee on February 23, 2010 which was intimated to Noticee vide hearing notice dated February 9, 2010. However, as per the request of Noticee the hearing was held on February 22, 2010 wherein Mr. Saumil Arvind Bhavnagari, Proprietor, M/s. V & S Intermediaries, Noticee and Anish Kharidia, Authorised Representative of Noticee appeared on behalf of Noticee and submitted that written submission will be submitted as early as possible, but not later than 30 days.

5. As submitted during the personal hearing a reply dated March 18, 2010 was submitted by Noticee interalia as under;

“.....It was also represented that out of total period of almost 150 days history of trading produced herewith, I am being implicated for only 19 days of my trading pattern and that too for meager 57, 490 shares against my total trading of 1, 94, 585 during the period under review and almost 14, 64, 468 shares spread over a 150 days and requested your goodself to view appropriately this fact of mine to see that and thereby come to conclusion that, can there be any malafide intention or ulterior motive behind such trades on my part during the period 27.11.2003 to 23.12.2003 so as to effect the price volume equilibrium of the scrip Adani.

“.....on account of this scrip remained in A group at ASE for long time and thereafter on account of disruption of trading at ASE, the jobbers / day traders who were earlier jobbing into scrip had to move to BSE / NSE online trading platform. Accordingly, I shifted to trade on BSE & NSE, where it was in B group. In B group, if the trade was not reversed and squared off during the day, it turned into delivery obligation on account of recent introduction of T + 2 trading system at relevant point of time. To avoid delivery obligation, all jobbers / day traders, including me, were resorting to first reversal of trade of existing position and thereafter once again making fresh position and reversal of trade and it continued for the day, transaction to transaction basis and therefore almost 85% to 90% of the total volume on BSE and NSE was an account of reversal of trades by all participants in the scrip and only 10% to 15% was delivery based volume. On account of liberty of carry forward in A group scrip, while jobbing A group scrip, no jobber is in hurry of reversal of trade as there cannot be delivery obligation. But in B group the situation is all together different as also broker does not permit huge delivery turnout to maintain their Margin Exposure limit. On account of the same, jobber either with bullish or bearish tendency, always remained agile to grab the opportunity of reversal of trade and were never increasing their total position / exposure in market at a time, without first reversing the existing position and were always trading in small quantity of their comfort, by keeping limit orders / stop losses in the scrip with merge price difference, to avoid escape of trade in case of volatility. Due to

this, the numbers of trades increased and on account of computerised system, it was not burdensome also. This fact was also corroborated by the data contained in Annexure 1 to your Notice, where in it can be seen that, though the quantity of trades is equal with counterparty, the number of trades is different on all days except on last day i.e. 15.12.2003. Even on further perusal of Annexure 2, it can be seen that the counterparty had first put in sale order which was captured by me. Out of my total quantity of almost 1, 15, 000 only 57, 490 shares were matched because of my jobbing tendency and counterparty's bearish tendency. Not only that on no single occasion our first trade was matched and therefore during the course of reversal of existing position or existing position or fresh position, the trades appears to have matched, which clearly shows that both of us were trading in our usual pattern and on account of market system and by coincidence such trades were matched. This fact also gain substantiation that, no charges for price manipulation, on account of this transaction has been leveled against me nor and the price discovery mechanism of BSE was found to be affected on account of such trades. Therefore, it was requested to treat the transaction as jobbing transaction and nothing untoward is required to be viewed into such transactions.

Even if the total quantity of 57, 490 shared is taken into consideration, than also, it comes to meager 5% of total volume of 11, 32, 400 shares on BSE and 1.14% of combined total volume of 50, 24, 256 shares on BSE & NSE, 8% of my total trading of 150 days and 30% of 1, 94,585 shares during the period of investigation. Had there been such intention of synchronized and / reversal / circular trades than % would be almost 100% for such limited period. Therefore, such low % of alleged fictitious synchronized and / reversal / circular trades, in my humble view, under no circumstances aerated artificial volume or misleading appearance or impacted the scrip which was regularly traded at relevant point of time.....

Taking in to account the fact represented during the course of personal hearing and the fact which is very much available on record and more particularly in light of the fact of only 13 days trading pattern as has been alleged against the fact of

consistent day trading / jobbing / by me through out the year, the quantum of negligible 1.14% of such trade synchronized and / reversal / circular trades, almost 90% of the volume in AEL through reversal of trades on BSE & NSE, no trading during price volatility, no allegation of price manipulation, no nexus or linkage or connection with counter party broker / client and in absence of sufficient details and data to support the charges and allegation of sufficient details and data to support the charges and allegation leveled against me, it is respectfully submitted that on plain and simple reading of the provisions of the above referred regulations, I believe that I have not indulged into any kind of trades in the scrip Adani Export Ltd. during the period investigation, which sought to have resulted in the alleged violation as stated in the Show Cause Notice. In view of the same, I emphatically and categorically deny the entire allegation alleged to have been violated by me in the above referred Show Cause Notice.

.....

With respect to the above observation, in absence of trade order log, volume order log and complete transaction history for the no. of transaction and price-volume volatility on account of such alleged trades in Adani Export Ltd. for the period, I do not admit the contents of the investigation authority. It shall be appreciated that in absence of such basic and requisite information, I express my inability to comment upon the same for time being.....

This is factually incorrect to observe and say that I have traded for all 19 days as I have not traded for after 18.12.2003 and no such kind of trading pattern have been observed after 15.12.2003.

..... So far the 1, 160 synchronized and / reversal trades in concerned, I say and submit that corresponding actual no. of order placement is very low and highly insignificant as the transaction were put in which disclosed quantity and on account of the same, multiple transactions have been generated in the computer system in the ratio of disclosed quantity. Under the circumstances, to arrive at the intention behind such alleged trades, if at all it is there, then in my genuine belief, No.

of. Order placement should be considered and not the number of trades. Assuming without admitting the same as true, than also the 1, 160 trades constitutes 17% of the total trades on BSE during the period. Therefore, it can be easily inferred that market in Adani could have been driven by rest of the 83% and not by 17% of the trades.

You executed 1, 160 structured, synchronized and / reversal trades with Ms. Falguni Shah trading through M/s. Rajesh N. Jhaveri, sub-broker of ASE Capital Services Ltd.

So far the above observation is concerned, the data presented in the table is not exceeding 17% of total trades during the period and therefore it cannot be said to be structured synchronized and / reversal trades with party. In addition to the above what is material and significant to observe that not a whisper has been made in the entire Notice or so called Investigation Report about the relation / linkage or any kind of nexus or connection between the persons mentioned in the para under reference and therefore it is requested not to form any adverse view on the basis of the data and observation made in the Notice in general and para in particular.

.....I have placed history of my trading of almost 150 days and out of which for meager 13 days trading pattern have been found. So far the close nexus with the parties to the concerned not a whisper has been made in the entire Notice or so called investigation report. And so far the interference with the pricing of Adani during the period is concerned, nothing has been stated in the Notice and only assumption of interference can be gathered.So far the charges of reversal of trade is concerned, I enclose herewith the data of BSE for your kind consideration as an Enclosure IV to his submission. On careful reading of the said data and total delivery details, it can be easily averred that on an average there remained only 10% of delivery transactions in the Adani. In view of this fact, it can be deciphered that, 90% of the volume in Adani was on account of reversal of trade. Considering this fact in to account and appreciating properly, the contribution of 10. 15% from amongst total 90% of reversal of trades is highly insignificant

and virtually negligible. So far the charges for circular trade is concerned, the difference in total no. of trades and difference in total quantity of trades, itself manifest that there was no circular trading otherwise there could not have been such difference in no. of trades.

..... I say, and submit that as I said that I was jobbing in the scrip and kept the open position to minimum quantity of trade I generally indulged into. Likewise counter party may had the same minimum order quantity. As the scrip was in B group, till the open position was not reversed, generally no further commitments were made. Therefore, once the price manifest the opportunity on the screen, the transactions would have entered and therefore the negligible difference in the timing is the result of immediate reflection to the prices available on screen, which needs to be viewed positively. Even otherwise, despite best human perfection and synchronized efforts, no trade can be put simultaneously and more particularly when there was frequent trading in the scrip Adani as well as in other scrip simultaneously also. However, after a lapse of almost 7 years and after indulging into series of transactions on daily basis in much scrip including Adani for almost 1, 94, 585 shares, it is difficult to remember the situation prevailed at that point of time and circumstances under which the transaction was entered into. Be as it may, but on account of such minimum quantity order placement and open position, it could have hardly affected the price volume equilibrium of the scrip at prevalent point of time.

..... Generally, jobber deals heavily when there is reasonable price variation in the scrip during the day and avoids dealing in volatile period. From the data of BSE, it can be seen that price in the scrip remained in reasonable range during the period 27.11.2003 to 15.12.2003 and therefore the trading took place regularly. But the moment, price movement found to be volatile; I have abstained from the indulging into trading. This fact in itself suggests that there was genuine jobbing interest on my part and there was no ulterior motive to cause price fluctuation or volume volatility on my part. The moment price stabilised in the scrip, I resumed trading in the scrip.

.....The observation of “it is difficult to accept so many different orders placed on several days always matched with the same set of brokers” does not hold good in as much as my total trading during the period was 1, 94, 585 shares against which only 57, 490 shares have been claimed and alleged to have matched i.e. 70% of my transactions have not been found to have matched with counterparty.

..... On obtaining the BSE membership probably during the said period, initially BSE granted limited terminal id, based on the volume of ACML. On account of limited terminal id, during the process of canalizing the trade from the various terminal of the sub brokers of ACML to the main server of BOLT, priority would have been inbuilt for matching of trade inter se, as it had germane from the same broker so far the BOLT is concerned though through different sub brokers. In my genuine impression, this could be the result of such trades / trading pattern.

.....nothing has been placed on record which goes to even remotely show or indicate that the fraud has been committed on account of indulgence of such trades. In absence of establishing the fraud has been committed , it is incorrect to say after seven 7 years and that too after flowing floods of water in the scrip of Adani that other investors in the market could have got an impression that theses were not genuine prices of the scrip.

6. It was noted that vide reply dated March 16, 2010, the Noticee had stated that trade order log and complete transaction history for the transaction and price-volume volatility in Adani Exports Ltd. for the period on BSE was not furnished with SCN. Hence details of transactions done by Noticee in the scrip of AEL on BSE were provided to the Noticee and yet another opportunity of personal hearing was granted to the Noticee on August 25, 2011 which was informed to the Noticee vide notice dated August 12, 2011. No one appeared for the scheduled hearing to represent Noticee. However, vide letter dated August 12, 2011 received on August 25, 2011,

Noticee stated that a further opportunity of hearing be afforded in light of fresh evidence being brought in on record in the form of Annexure – 1 & 2. Noticee further stated that contents and font size used in the annexure are not legible and requested for a copy of annexures which are readable and legible. As sought by Noticee, Annexures with larger size font were provided to Noticee vide hearing notice dated September 7, 2011 and the Noticee was also informed that a personal hearing is scheduled for September 20, 2011. However there was no representation on behalf of the Noticee.

7. It is pertinent to note the conduct of the Noticee during the proceedings, the Noticee made some excuse or the other to delay the proceedings. When an opportunity of personal hearing was granted, Noticee sought for an adjournment stating the time given is short and requested for another date with a 15 day notice. When the hearing was adjourned and scheduled as requested by the Noticee, 30 days of time was sought to file reply. In the reply it was contended that the complete material based on which SCN was issued was not provided. When the material was provided and one more opportunity of personal hearing was granted in view of the additional material provided, Noticee stated that it was fresh evidence placed on record and sought for an adjournment on the ground that the Annexures were not legible although it was quite legible. When the material was provided in larger size font and yet another opportunity of personal hearing was granted, the Noticee failed to appear before me or file any further reply.

In my opinion the Noticee has been given adequate opportunities to present its case, a reply has also been filed by the Noticee hence, I proceed with passing of the order.

CONSIDERATION OF ISSUES AND FINDINGS

8. I have carefully perused the documents available on record. The issues that arise for consideration in the present case are:
- a) Whether Noticee had violated regulations 4 (1), 4 (2) (a), (b), (e), (g) and (n) of PFUTP Regulations?
 - b) Does the violation, if any, on the part of Noticee attract monetary penalty under sections 15HA of SEBI Act?
 - c) If so, what would the monetary penalty be that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

Before moving forward, it will be appropriate to refer to the relevant provisions of PFUTP Regulations, which read as under:

PFUTP Regulations

“4. Prohibition of manipulative, fraudulent and unfair trade practices

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

- (b) *dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss;*
- (c) ...
- (d) ...
- (e) *any act or omission amounting to manipulation of the price of a security;*
- (f) ...
- (g) *entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security.*
- (h) ...
- (i) ...
- (j) ...
- (k) ...
- (l) ...
- (m) ...
- (n) *circular transactions in respect of a security entered into between intermediaries in order to increase commission to provide a false appearance of trading in such security or to inflate, depress or cause fluctuations in the price of such security;”*

9. Investigation reveals that the price of the scrip increased from ₹ 209.55 as on November 27, 2003 to ₹ 443.10 as on December 23, 2003 in a span of 19 trading days. The scrip touched a highest price of ₹ 478 as on December 19, 2003. It was observed that 3, 42, 780 shares i.e., 30.27% of the total quantity traded in the market, were trades in nature of synchronized circular/reversal trades involving certain clients/brokers out of the total 11, 32, 400 shares traded on BSE during the period November 27, 2003 to December 23, 2003. It was observed that on BSE the volume contribution of such synchronized trades was equal to or more than 50% of the total day's quantity traded on 11 trading days and was more than 30% of the gross volume on 5 trading days. Out of 19 trading days covering the entire period of investigation, synchronized circular/ reversal trades i.e., reversing the transactions with the same set of brokers and clients or indulging in circular trading transactions took place on all trading days thus creating artificial volume of trading and giving misleading impression of trading in the market. The gross traded quantity on NSE during the period of investigation was 38, 91, 856 shares. The quantity traded by way of structured/synchronized trades amounts to 7.63% of the market gross.
10. It is observed that during the above period, the Noticee entered into numerous synchronized circular / reversal trade transactions with the same counterparties i.e., Noticee through R J Shah on the one side and Falguni Shah (hereinafter referred to as "**Falguni**") trading through M/s. Rajesh Jhaveri (hereinafter referred to as "**Rajesh**") sub broker of ASE Capital Services Ltd, (hereinafter referred to as "**ACML**") broker, BSE on the other side. The summary of such trades is given below –

Date of trade	Buy Client	No. of trades	Qty	Sell Client	Day qty traded	% to day qty traded	Total no. of trades on the day	% of artificial trades for the day
27.11.03	V & S	39	5000	Falguni				
	Falguni	29	5000	V & S				
27.11.03		68	10000		31810	31.44	388	17.53
28.11.03	V & S	59	5000	Falguni				
	Falguni	38	5000	V & S				
28.11.03		97	10000		33321	30.01	416	23.32
1.12.03	V & S	72	5000	Falguni				
	Falguni	37	5000	V & S				
1.12.03		109	10000		34525	28.96	497	21.93
2.12.03	V & S	119	3990	Falguni				
	Falguni	58	4000	V & S				
2.12.03		177	7990		30735	26.00	496	35.69
3.12.03	V & S	48	5000	Falguni				
	Falguni	38	5000	V & S				
3.12.03		86	10000		40401	24.75	595	14.45
4.12.03	V & S	57	5000	Falguni				
	Falguni	39	5000	V & S				
4.12.03		96	10000		38891	25.71	535	17.94
5.12.03	V & S	28	4975	Falguni				
	Falguni	48	5000	V & S				
5.12.03		76	9975		43112	23.14	538	14.13
8.12.03	V & S	56	5000	Falguni				
	Falguni	39	5000	V & S				
8.12.03		95	10000		26404	37.87	315	30.16
9.12.03	V & S	10	1500	Falguni				
	Falguni	19	1500	V & S				
9.12.03		29	3000		49654	6.04	800	3.63
10.12.03	V & S	36	3000	Falguni				
	Falguni	38	3000	V & S				
10.12.03		74	6000		44104	13.60	595	12.44
11.12.03	V & S	36	4000	Falguni				
	Falguni	38	4000	V & S				
11.12.03		74	8000		37153	21.53	396	18.69
12.12.03	V & S	38	5000	Falguni				
	Falguni	29	5000	V & S				
12.12.03		67	10000		43242	23.13	402	16.67
15.12.03	V & S	56	5000	Falguni				
	Falguni	56	5000	V & S				
15.12.03		112	10000		46939	21.30	629	17.81
Grand Total		1160	114965		500291	22.98	6602	17.57

Trades done on BSE

Date	Bought Qty	Bought by Client (sub-broker/Broker)	Bought From Client (Broker)	Sold Qty	Sold by Client (sub-broker/Broker)	Sold to Client (Broker)
27.11.03 to 23.12.03	57475	Falguni Shah (through Rajesh N Jhaveri/ ASE Capital)	V & S Intermediaries (through R J Shah / ASE Capital)	57490	Falguni Shah (through Rajesh N Jhaveri/ ASE Capital)	V & S Intermediaries (through R J Shah / ASE Capital)

Following is the sample of trades executed on November 28, 2003 between Noticee whose client code No. 0872 trading through R J Shah on the one side and Falguni whose client code No. 052F002 trading through M/s. Rajesh Jhaveri. Code D0293 shown for the buy broker and the sell broker is that of ACML of which R J Shah and Rajesh Jhaveri are sub-brokers

Trade No	Trade Time	Qty	Price	Buy broker code	Sell broker code	Buy Order Time	Sell Order Time	Time diff	Buy Order Qty	Sell Order Qty	Buy Order Rate	Sell Order Rate	Buy Client Code	Sell Client Code
11	10:47:47	151	213.05	D0293	D0293	10:47:47	10:47:47	0:00:00	1500	1500	213.05	213.05	052F002	052F002
12	10:47:47	151	213.05	D0293	D0293	10:47:47	10:47:47	0:00:00	1500	1500	213.05	213.05	0872	052F002
13	10:47:47	151	213.05	D0293	D0293	10:47:47	10:47:47	0:00:00	1500	1500	213.05	213.05	0872	052F002
14	10:47:47	151	213.05	D0293	D0293	10:47:47	10:47:47	0:00:00	1500	1500	213.05	213.05	0872	052F002
15	10:47:47	151	213.05	D0293	D0293	10:47:47	10:47:47	0:00:00	1500	1500	213.05	213.05	0872	052F002
16	10:47:47	151	213.05	D0293	D0293	10:47:47	10:47:47	0:00:00	1500	1500	213.05	213.05	0872	052F002
17	10:47:47	151	213.05	D0293	D0293	10:47:47	10:47:47	0:00:00	1500	1500	213.05	213.05	0872	052F002
18	10:47:47	151	213.05	D0293	D0293	10:47:47	10:47:47	0:00:00	1500	1500	213.05	213.05	0872	052F002
19	10:47:47	151	213.05	D0293	D0293	10:47:47	10:47:47	0:00:00	1500	1500	213.05	213.05	0872	052F002
20	10:47:47	141	213.05	D0293	D0293	10:47:47	10:47:47	0:00:00	1500	1500	213.05	213.05	0872	052F002
84	11:46:25	251	213.10	D0293	D0293	11:46:25	11:46:21	0:00:04	2500	2500	213.1	213.1	052F002	0872
85	11:46:25	4	213.10	D0293	D0293	11:46:25	11:46:21	0:00:04	2500	2500	213.1	213.1	052F002	0872
86	11:46:25	247	213.10	D0293	D0293	11:46:25	11:46:21	0:00:04	2500	2500	213.1	213.1	052F002	0872
87	11:46:25	8	213.10	D0293	D0293	11:46:25	11:46:21	0:00:04	2500	2500	213.1	213.1	052F002	0872
88	11:46:25	243	213.10	D0293	D0293	11:46:25	11:46:21	0:00:04	2500	2500	213.1	213.1	052F002	0872
89	11:46:25	12	213.10	D0293	D0293	11:46:25	11:46:21	0:00:04	2500	2500	213.1	213.1	052F002	0872
90	11:46:25	239	213.10	D0293	D0293	11:46:25	11:46:21	0:00:04	2500	2500	213.1	213.1	052F002	0872
91	11:46:25	16	213.10	D0293	D0293	11:46:25	11:46:21	0:00:04	2500	2500	213.1	213.1	052F002	0872
92	11:46:25	235	213.10	D0293	D0293	11:46:25	11:46:21	0:00:04	2500	2500	213.1	213.1	052F002	0872
93	11:46:25	20	213.10	D0293	D0293	11:46:25	11:46:21	0:00:04	2500	2500	213.1	213.1	052F002	0872
94	11:46:25	231	213.10	D0293	D0293	11:46:25	11:46:21	0:00:04	2500	2500	213.1	213.1	052F002	0872

256	13:57:40	205	212.05	D0293	D0293	13:57:39	13:57:40	0:00:01	2500	2500	212.05	212.05	052F002	0872
313	14:36:44	55	212.55	D0293	D0293	14:36:42	14:36:44	0:00:02	500	500	212.55	212.55	0872	052F002
314	14:36:44	55	212.55	D0293	D0293	14:36:42	14:36:44	0:00:02	500	500	212.55	212.55	0872	052F002
315	14:36:44	55	212.55	D0293	D0293	14:36:42	14:36:44	0:00:02	500	500	212.55	212.55	0872	052F002
316	14:36:44	55	212.55	D0293	D0293	14:36:42	14:36:44	0:00:02	500	500	212.55	212.55	0872	052F002
317	14:36:44	55	212.55	D0293	D0293	14:36:42	14:36:44	0:00:02	500	500	212.55	212.55	0872	052F002
318	14:36:44	55	212.55	D0293	D0293	14:36:42	14:36:44	0:00:02	500	500	212.55	212.55	0872	052F002
319	14:36:44	55	212.55	D0293	D0293	14:36:42	14:36:44	0:00:02	500	500	212.55	212.55	0872	052F002
320	14:36:44	55	212.55	D0293	D0293	14:36:42	14:36:44	0:00:02	500	500	212.55	212.55	0872	052F002
321	14:36:44	55	212.55	D0293	D0293	14:36:42	14:36:44	0:00:02	500	500	212.55	212.55	0872	052F002
322	14:36:44	5	212.55	D0293	D0293	14:36:42	14:36:44	0:00:02	500	500	212.55	212.55	0872	052F002
337	14:49:27	55	212.10	D0293	D0293	14:49:26	14:49:27	0:00:01	500	500	212.1	212.1	0872	052F002
338	14:49:27	55	212.10	D0293	D0293	14:49:26	14:49:27	0:00:01	500	500	212.1	212.1	0872	052F002
339	14:49:27	55	212.10	D0293	D0293	14:49:26	14:49:27	0:00:01	500	500	212.1	212.1	0872	052F002
340	14:49:27	55	212.10	D0293	D0293	14:49:26	14:49:27	0:00:01	500	500	212.1	212.1	0872	052F002
341	14:49:27	55	212.10	D0293	D0293	14:49:26	14:49:27	0:00:01	500	500	212.1	212.1	0872	052F002
342	14:49:27	55	212.10	D0293	D0293	14:49:26	14:49:27	0:00:01	500	500	212.1	212.1	0872	052F002
343	14:49:27	55	212.10	D0293	D0293	14:49:26	14:49:27	0:00:01	500	500	212.1	212.1	0872	052F002
344	14:49:27	55	212.10	D0293	D0293	14:49:26	14:49:27	0:00:01	500	500	212.1	212.1	0872	052F002
345	14:49:27	55	212.10	D0293	D0293	14:49:26	14:49:27	0:00:01	500	500	212.1	212.1	0872	052F002
346	14:49:27	5	212.10	D0293	D0293	14:49:26	14:49:27	0:00:01	500	500	212.1	212.1	0872	052F002
347	14:49:40	55	212.30	D0293	D0293	14:49:38	14:49:39	0:00:01	500	500	212.3	212.3	0872	052F002
348	14:49:40	55	212.30	D0293	D0293	14:49:38	14:49:39	0:00:01	500	500	212.3	212.3	0872	052F002
349	14:49:40	55	212.30	D0293	D0293	14:49:38	14:49:39	0:00:01	500	500	212.3	212.3	0872	052F002
350	14:49:40	55	212.30	D0293	D0293	14:49:38	14:49:39	0:00:01	500	500	212.3	212.3	0872	052F002
351	14:49:40	55	212.30	D0293	D0293	14:49:38	14:49:39	0:00:01	500	500	212.3	212.3	0872	052F002
352	14:49:40	55	212.30	D0293	D0293	14:49:38	14:49:39	0:00:01	500	500	212.3	212.3	0872	052F002
353	14:49:40	55	212.30	D0293	D0293	14:49:38	14:49:39	0:00:01	500	500	212.3	212.3	0872	052F002
354	14:49:40	55	212.30	D0293	D0293	14:49:38	14:49:39	0:00:01	500	500	212.3	212.3	0872	052F002
355	14:49:40	55	212.30	D0293	D0293	14:49:38	14:49:39	0:00:01	500	500	212.3	212.3	0872	052F002
356	14:49:40	5	212.30	D0293	D0293	14:49:38	14:49:39	0:00:01	500	500	212.3	212.3	0872	052F002

It is observed that –

- (i) Noticee has executed 1,160 synchronised reversal trades / circular trades for 1, 14, 965 shares of AEL during the investigation period through R J Shah with Falguni as counterparty.
- (ii) The transactions by these 2 clients accounted for more than 25% of the days quantity traded on 7 days, and more than 20% of the days quantity traded on 4 days. Thus on 11 trading days, their

synchronized reversal trades contributed to more than 20% of the total volume traded in the market for the day. A total of 1, 14, 965 shares were traded by way of reversal of trades by these 2 clients contributing to 10.15% of the total volume traded in the market during entire period of investigation and 33.53% of the total artificial volumes generated.

- (iii) trades were synchronized with a time difference between orders mostly ranging from 0 to 11 seconds. The buy and sell order rate/quantity also matched with same counterparty.
- (iv) most transactions have been reversed on the same day by again entering synchronized orders for same quantity and at matching rates.

11. I note that out of a total of 19 trading days during the entire period of investigation, the Noticee had traded on all 19 trading days from November 27, 2003 to December 23, 2003. In AEL, 1, 160 synchronized and / reversal trades were executed by the Noticee with Falguni for 1, 14, 965 shares contributing to 10.15% of the total volume traded in the market during entire period of investigation. The trades of the Noticee contributed to 33.53% of the total artificial volumes generated during the entire period and significantly contributed to market volume on the days the Noticee traded. Further, trades of the Noticee for 46.70% of the total sales and 48.07% of the total purchases on BSE. 94.15% of these trades were in nature of synchronized and/ or reversal trades. Trades of the Noticee accounted for more than 25% of the days quantity traded on 7 days, and more than 20% of the days quantity traded on 4 days. In other words, on 11 trading days synchronized and/ reversal trades of the Noticee contributed to more than 20% of the total volume traded in the market for the day.

12. I note that the order limit prices and quantities were also the same as those of the counter party broker/client in all the trades. Further, on 13 trading days from November 27, 2003 to December 16, 2003, out of 145 synchronized orders placed by the Noticee and Falguni, 52 orders were such that the time difference between placement of buy and sell orders was zero seconds, indicating that these were placed simultaneously. This constitutes 35.8% of the total orders placed by the Noticee. Further, 50 orders were so placed that the time difference between buy and sell orders was 1 second, 20 orders were placed with a time difference of 2 seconds and 8 orders were placed with time difference of 3 seconds. Hence 91% of the orders placed by the Noticee were synchronized with Falguni on the opposite side, in nature of synchronized and / reversal trades, where the quantity, price of the orders matched and the time difference between the purchase and sale orders was less than 3 seconds.

13. It is observed that Noticee had entered into fictitious synchronized and / reversal trades trading with specific counterparty, Falguni. It is also observed that for most trades, buy and sell orders were placed within seconds (0 to 11 seconds) of each other. The order limit prices and quantities were also matching with those of the designated counterparty in almost all the trades. The reversal of most trades took place on the same day or on next day after execution of first set of trades. It cannot be a coincidence that such a large number of transactions spread over many days have matched between specific brokers/sub brokers and clients only. Also, the zero time difference or near zero time difference between placement of buy and sell orders indicates clear intention of the Noticee to create artificial volume on the days of these trades. Such type of transactions can not be considered genuine transactions.

14. The Noticee in reply to SCN had submitted that trading done not only in AEL but also trading in many other scrips as jobber / day trader. Noticee had stressed on the trading pattern stating trading was done before and after investigation wherein trading was done for equal number of shares. Noticee also submitted that trading was done in similar manner in other scrips also. He had submitted trading details in support of the submission. While the submissions are taken on record, it is to be noted that the current adjudication proceedings are for the trading done by the Noticee in the scrip of AEL during the investigation period hence the trading pattern of the Noticee in other scrips or during the period beyond investigation is not relevant to this proceeding.

The Noticee submitted that he was doing jobbing in the scrip and kept the open position to minimum quantity of trade that the Noticee generally indulged into, likewise counter party may have had the same minimum order quantity. As the scrip was in B group, till the open position was not reversed, generally no further commitments were made. Therefore, once the price manifest the opportunity on the screen, the transactions would have entered and therefore the negligible difference in the timing is the result of immediate reflection to the prices available on screen, which needs to be viewed positively. Even otherwise, despite best human perfection and synchronized efforts, no trade can be put simultaneously and more particularly when there was frequent trading in the scrip of AEL as well as in other scrip simultaneously also. I have considered this submission. Considering the fact that all his orders have consistently matched with a specific counter party viz., Falguni, this contention cannot be accepted.

It is difficult to accept that so many different orders placed on several days always matched with the same client and were also reversed with them by sheer co-incidence. Further these trades contributed to significant volume

of trading in AEL shares in the market. Such of transactions which are reversed within short time, and which constitute a major portion of market volume, do impact price movement and volatility in stock markets. Other investors in the market get an impression that these are genuine trades and prices of the scrip whereas this is not the fact. It induces others to invest in the scrip at those prices which are not genuine.

15. The method and the manner in which the trades were executed are the most important factors to be considered in these circumstances. In almost all the trades, the orders were so placed so as to ensure immediate matching of the buy and sell quantity and the price with the same counterparties viz. between Noticee and Falguni. The buy and sell orders were placed at almost the same time between the counterparty entities, with a difference of zero to few seconds. This proximity in placing of orders at the same price and for the same quantity, resulted in their immediate matching, thus proving synchronization in placement of the same. Further, almost all the quantity of AEL shares purchased/sold by Noticee on a particular day was being reversed on the same day. This proves that Noticee, in coordination with Falguni, was only creating artificial volumes in the market. This also proves that Noticee indulged in synchronized circular / reversal trades.

A large number of trades got matched between Noticee and Falguni during the investigation period. The phenomenal regularity with which Noticee had indulged in such synchronized reversal / circular trades leads one to conclude that these transactions were effectively meant to manipulate the market. It is my considered belief that these trades were only creating artificial volumes with the motive to induce general investors to invest in the said scrip.

16. The fact is that had the aforesaid trades been executed in the normal course of business, such perfect matching would not have been possible. The buy and sell prices of one entity were always same as the buy/sell rates of the other entity in all the settlements, such that the trades of these entities always matched. The transactions as mentioned earlier which were spread over a period of time were definitely done with some inbuilt component of 'intent' involved. Greater the number of such synchronized trades, the larger is the chance of trades not being genuine in nature, which is bound to affect the market equilibrium. 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 synchronized trading involving large scale manipulation and the same was also brought out in the 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. Choosing selective time slots does not appear to be an involuntary action.*"
17. In my view, Noticee by execution of these synchronized circular/reversal transactions created artificial liquidity in the scrip and played a role in the manipulation of the trading. In my view, Noticee through the said artificial trades interfered with the market equilibrium and thereby affected the price and volume of the said scrip. The trades executed herein by Noticee were not the real trades as there was no intention to change the beneficial ownership. When the trades were inherently not 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 July 14, 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.”

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.

18. 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. Regulation 4 (2) (b) of PFUTP Regulations prohibits dealings in a security intended to operate as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gains. Regulation 4 (2) (e) of PFUTP Regulations prohibits any act or omission amounting to manipulation of the price of a security. Regulation 4 (2) (g) of PFUTP Regulations prohibits entering into any

transaction in securities without intention of performing it or without intention of change of ownership of such security. As detailed above, the acts of Noticee clearly created false and misleading appearance of trading in the shares of AEL and Noticee did not act in a bonafide manner. The facts of the case highlight Noticee's involvement, who executed numerous synchronized circular / reversal trades which led to creation of artificial volume and misleading appearance of trading in AEL shares on account of collusive activities with the entities as discussed in the preceding paragraphs. As the transactions executed by Noticee in the said scrip were synchronized circular/reversal trades, Noticee does not appear to have any genuine trading interest in the scrip. Regulation 4 (2) (n) of PFUTP Regulations is applicable to intermediaries and hence does not apply to Noticee.

19. I am of the view that the facts of the present case clearly bring out an element of fraud and unfair trade practices indulged in by Noticee. Therefore, I hold that the charges leveled against Noticee are proved and that the allegation of violation of provisions of regulations 4 (1), 4 (2) (a), (b), (e) and (g) of PFUTP Regulations by Noticee stand established.

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..."*. Thus, the aforesaid violations of PFUTP Regulations by Noticee make the Noticee liable for penalty under Section 15HA of SEBI Act which reads 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.

20. While determining the quantum of penalty under section 15HA, it is important to consider the factors stipulated in section 15J of SEBI Act, which read 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.”*

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. The investigation report also does not dwell on the extent of specific gains made by Noticee and counterparties or brokers. Suffice to state that keeping in mind the practices indulged in by Noticee, gains per se were made by Noticee and that Noticee 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, the increase in liquidity / volumes raise the ‘demand’ of that scrip in the securities market. Greater the liquidity, 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. 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. Considering the continuous effort of Noticee in this aspect where the synchronized circular / reversal trades were carried out over a period of time, it can safely be surmised that the nature of default was also repetitive.

ORDER

21. In terms of provisions of rule 5 (1) of the Rules, in exercise of power under section 15 (l) of SEBI Act, I impose a penalty of ₹ 1, 50, 000/- (Rupees one lac and fifty thousand only)] under section 15HA of SEBI Act on Noticee, M/s. V & S Intermediaries for violation of regulations 4 (1), 4 (2) (a), (b), (e) and (g) of PFUTP Regulations. Considering the facts and circumstances of the case, this penalty will be commensurate with the violations committed by Noticee.

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. Biswajit Choudhury, Deputy General Manager, Investigations Department – ID 6, SEBI, SEBI Bhavan, Plot No. C – 4 A, Block "G", Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

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

Date: **September 29, 2011**
Place: **Mumbai**

Piyooosh Gupta
Adjudicating Officer