BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PB/AO- 30/2012]

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

JAGADISH R JANI
(PAN. No. ADGPJ1427M)
In the matter of Flawless Diamond (India) Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted investigation in trading in the scrip of M/s Flawless Diamond (India) Limited (hereinafter referred to as **'FDIL'/'Company'**) which is listed on Bombay Stock Exchange (hereinafter referred to as **'BSE'**). The period of investigation in the scrip of FDIL was from June 2006 to February 2007 (hereinafter referred to as **'Investigation Period'**).

2. The share price of FDIL on BSE increased from ₹ 13.55 on June 06, 2006 to ₹ 129.80 on February 07, 2007. The scrip had witnessed a price rise of approx. 857% on BSE during investigation period, whereas during the said period BSE Sensex moved from 9957.32 to 14643.13 i.e. an increase of approx. 47%. The scrip was traded with an average volume of 30,655 shares during the investigation period. Details of price rise during various segments of investigation period are as below:

S No.	Period of Examination	Price Rise	% Price Rise	Average Traded Vol.
1	August 18 to September 08, 2006	₹ 18.30 to ₹ 32.9	79.78	9500
2	October 06 to October 23, 2006	₹ 32.65 to ₹ 45.15	38.49	26,000
3	November 17 to November 23, 2006	₹ 46.50 to ₹ 57.30	24.16	53,000
4	December 26, 2006 to February 07, 2007	₹ 54.00 to ₹ 129.80	140.37	83,384

3. The role of the entities who had traded in the scrip of FDIL was scrutinized. It was observed during the investigation that certain entities viz. Akhilesh Kamla Prasad, Balasaheb J Kamble, Dinesh K Pandey, Jagdish R Jani, Kirit S Gandhi, Vijay K Bohra, Dilip K Pawar and Hiren Kirit Gandhi (hereinafter referred as **"Group"**) had allegedly indulged in synchronization of deals/circular trading/fictitious trading in such a manner that led to creation of artificial volume and impacted the price of the scrip.

4. It was alleged that one of the entities, Mr. Jagadish R Jani (hereinafter referred to as **"Noticee"**) had violated the provisions of regulations 4(1), 4(2)(a), 4(2)(b)and 4(2)(g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as **"PFUTP Regulations"**) and therefore, liable for monetary penalty under section 15HA of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**").

APPOINTMENT OF ADJUDICATING OFFICER

5. The undersigned has been appointed as Adjudicating Officer vide order dated March 23, 2011 under section 15 I of SEBI Act read with rule 3 of SEBI (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 provisions of PFUTP Regulations.

SHOW CAUSE NOTICE, HEARING AND REPLY

6. Show Cause Notice No. EAD-7/PB/AK/21012/2011 dated June 30, 2011 (hereinafter referred to as **"SCN"**) was issued to the Noticee under rule 4(1) of the Rules to show cause as to why an inquiry should not be held and penalty be not imposed under section 15HA of SEBI Act for the alleged violation specified in the said SCN.

7. I find from the records that the SCN was issued through courier at the last known address of the Noticee, i.e. at *"Shri Ram Vihar Block No. 23, Rokadia Lane, Near Gokul Hotel, Borivali (W) Mumbai 400 092""* and was delivered. Further, the Noticee vide letter dated August 03, 2011 informed the undersigned that he had filed consent application before SEBI and requested to keep the matter in abeyance till the outcome of consent proceedings.

8. In the interest of natural justice and in order to conduct an inquiry as per rule 4 (3) of the Rules, the Noticee was granted an opportunity of personal hearing on September 20, 2011 at SEBI, Head Office, Mumbai vide notice dated September 06, 2011. The said notice was sent through speed post with acknowledgement (SPAD) to the aforesaid address of the Noticee and the same was delivered. However, the Noticee did not appear for hearing.

9. The consent application of the Noticee was rejected by the High Powered Advisory Committee of SEBI in its meeting held on December 21, 2011. Thereafter, Mr. Vikas Bengani, Authorized Representative, (hereinafter referred to as "**AR**") vide email dated December 28, 2011 requested for the inspection of the documents and submitted the authorization letter from the Noticee dated December 20, 2011. The Noticee was granted an opportunity of inspection of documents on January 25, 2012, at SEBI, Head Office, Mumbai vide notice dated January 17, 2012. However, the Noticee vide letter dated January 21, 2012 requested for postponement of the date of

inspection of documents. Acceding to the request of the Noticee, another opportunity of inspection of documents was granted to the Noticee on February 15, 2012 at SEBI, Head Office, Mumbai vide notice dated February 03, 2012. The AR appeared on February 15, 2012 and inspected the documents including the relevant portion of the investigation report on behalf of the Noticee. Further, vide notice dated February 03, 2012, it was advised to the Noticee to submit the reply to the SCN within 10 days from the date of inspection of documents. However, the Noticee chose to ignore the same.

10. In the interest of natural justice and in order to conduct an inquiry as per rule 4 (3) of the Rules, the Noticee was granted a final opportunity of personal hearing on March 20, 2012 at SEBI, Head Office, Mumbai vide notice dated March 09, 2012. The AR appeared on behalf of the Noticee on March 20, 2012 and submitted the reply dated March 20, 2012 to the SCN inter-alia as under:

"……

- *I deny that I have violated any of the Rules and Regulation of the SEBI in the said matter as alleged in the Show Cause Notice.*
- *1 have started trading on 19-10-2006 and traded till 03-01-2007 in the said scrip during the investigation period. I have traded only 38 days out of total 188 days of trading during the investigation Period.*
- *My total trade in the said scrip was only 101270 shares (only 1.76 % of the total volume traded during the investigation Period). I have earned about Rs.5500/- in the trading of the scrip of the company.*
- *It is submitted that I have not executed any circular trades in the said scrip. The trade matched as alleged with some of parties is only a coincidence. I have no intention to circular the trade in the said scrip.*
- *The first illustration given on the page no. 5 of the Show Cause Notice for the trade executed on 10-11-2006 in between me and Sri Kirit S Gandhi is wrong. Only 800 shares trade was executed in the rate of Rs. 47.2 instead of 1500 shares*

as showed in the said illustration on the said date. The second illustration is also wrong as the quantity traded on the in between me and Sri Balasaheb Kamble is only 100 shares in rate of Rs. 47.95 and the quantity traded with Kirit S Gandhi was 500 at the rate of Rs. 47.75 instead of both the quantities 2500 shares as shown in the illustration dated 20-11-2006.

- *I have not manipulated the price of the said scrip. It is clear from the Trade and Order Log that the price of the scrip has already raised before I started trading in the scrip of the company. I have not traded in between the first segment of the price rise and the day when I have started trading the price of the scrip already reached upto Rs.44. The price was fluctuating in between Rs.43 -60 in between 19-10-2006 to 03-01-2007. After the said date I have not traded in the said scrip during the Investigation Period when price rose from Rs. 60 to Rs. 129.8.*
- *The Price on the scrip was influenced by the corporate announcement made by the company during the investigation period. The company has come out with various corporate announcements during the investigation period which lead the price rise in the shares of the company. The quarterly results of the company also supported the price rise in the scrip.*
- *It is humble submission that the price of the scrip rose from Rs.44 to Rs.60 in between 19-10-2006 to 03-01-2007 but not rose as double as alleged in Para No.9 of the show cause notice and I have already given the reasons for price rise in the scrip.*
- *Without prejudice to my aforesaid submission I wish to submit that the quantum based penalty is irrational and illogical. Section 15J of the SEBI Act provides the factors to be considered while imposing the penalty for various violations. The Hon'ble SAT in order dated 16-01-2012 in the matter of M/s Sparkline Mercantile Co. Pvt. Ltd. has been pleased to reduce the quantum of the penalty by holding that "…….. It was then argued by the learned counsel for the appellant that under similar facts and circumstances relating to the same transaction in relation to two other group entities namely Hem Kanak Mercantile Private Limited (Appeal no. 171 of 2009 decided on11.3.2010) and Samradha Finstock Pvt. Ltd. (Appeal no. 204 of 2010 decided on 28.2.2011) this Tribunal had reduced the penalty to Rs. 7lacs. The transactions are same and the entities involved are also*

group entities. The case of the appellant is identical to the cases referred to above. The appellant, therefore, cannot be given a different treatment. We, therefore, reduce the penalty to Rs. 7 lacs in this case……" I therefore request you that the lowest amount of the penalty imposed by you in your Order dated 31-01 -2012 against Sri Dinesh Kumar Pandey in the said matter be considered in my case as the charges are identical and hence differential treatment cannot be made.

……."

During the course of hearing, AR made the following submissions *inter-alia,* as under:

- *"I on behalf of the Noticee submit the detailed reply dated March 20, 2012 to the SCN in the matter.*
- *Further, I deny the charge that Noticee had manipulated the price during the period from October 19, 2006 to January 03, 2007. The price hike during the said period is because the company i.e. M/s Flawless Diamond India Limited (FDIL) had made a number of corporate announcements (copy of list of corporate announcement is enclosed) and the financial performance of FDIL was also good.*
- *Further, I deny that the rise in the price of the scrip of FDIL during the period October 19, 2006 to January 03, 2007 was double and Noticee was not majorly responsible for the price rise. I submit that the price of the scrip was fluctuating between ₹ 43 to ₹ 60 during the time of Noticee's trades.*
- *I accept the charge that Noitcee had indulged in circular trading with other members of the group which resulted in volume build-up. I request the AO to take a lenient view in the matter."*

CONSIDERATION OF ISSUES AND FINDINGS

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

a) Whether the Noticee had violated regulations 4(1), 4(2)(a), 4(2)(b)and 4(2)(g) of PFUTP Regulations?

b) Does the violation, if any, on the part of the Noticee attract monetary penalty under section 15 HA of SEBI Act?

c) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

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

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)……..

(f)……..

(g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;

13. Regulation 4(1) of PFUTP Regulations prohibits a person from indulging in a fraudulent or an unfair trade practice in securities. 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)(g) of PFUTP Regulations prohibits any person from entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security.

14. From the documents available on record i.e. from know your client form (KYC) and unique client code form (UCC), following details were observed:

Sr. no.	**Name of the entities**	**Connection**
1	Balasaheb J Kamble and Dilip K Pawar	common Mobile no: 9869526770
2	Dilip K Pawar & Vijay K Bohra	Works in the same office of an entity M/s Hirachand Salecha [as per the written statement Shri Abhayraj Shukla recorded on December 24, 2010 in the matter of Crazy Infotech Ltd.]
3	Akhilesh Kamla Prasad and Vijay K Bohra	Common mobile no: 9323301583.
4.	Akhilesh Kamla Prasad and Jagadish R Jani	Bank a/c details [Bank of India, Stock Exchange Branch] of Jagadish R Jani: Rs. 60,000 were transferred to Akhilesh Kamla Prasad on February 21, 2006.
5	Dinesh K Pandey and Kirit S Gandhi	common landline no: 022-22651482
6	Dinesh K Pandey and Vijay K Bohra	Works in the same office of an entity M/s Hirachand Salecha [as per the written statement Shri Abhayraj Shukla recorded on December 24, 2010 in the matter of Crazy Infotech Ltd.]
7	Hiren Kirit Gandhi and Kirit S Gandhi	Hiren Kirit Gandhi is son of Kirit S Gandhi

15. Thus, from the above table, I find that the Group i.e. Akhilesh Kamla Prasad, Balasaheb J Kamble, Dinesh K Pandey, Jagadish R Jani, Kirit S Gandhi, Vijay K Bohra, Dilip K Pawar and Hiren Kirit Gandhi are connected to each other.

16. Further, upon examination of data, trade & order log and documents available on record, it is observed that during October 11, 2006 to January 15, 2007, Group had purchased 4,52,640 shares and sold 4,52,640 shares constituting about 15.76% (both buy and sell) of the total traded quantity of 57,43,409 shares during investigation period. Further, circular trading was observed from October 19, 2006 to January 03, 2007. Out of total 4,52,640 shares purchased by the Group, 4,37,620 shares were purchased within the Group i.e. constituting 96.68% of the total shares purchased by the Group. Out of total 4,52,640 shares sold by the Group, 3,08,395 shares were sold within the Group i.e. constituting 68.13% of the total shares sold by the Group. Trading details of the Group are as follows:

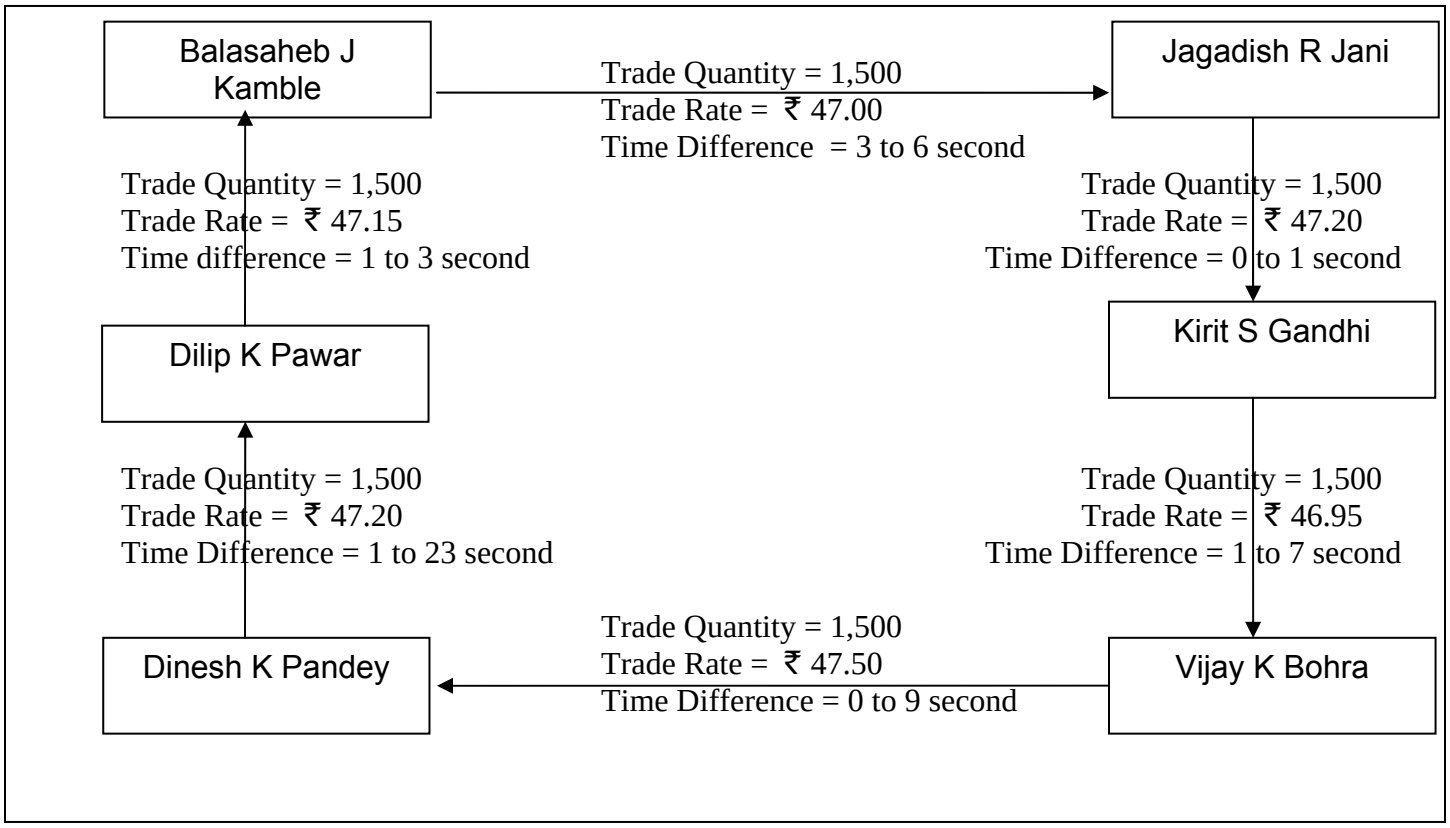
Client Name	**Total Buy Quantity of Group (shares)**	**Buy within the Group (shares)**	**Total Sell Quantity of Group (shares)**	**Sell within the Group (shares)**
Akhilesh Kamla Prasad	66113	61705	66113	60180
Balasaheb Jaganath Kamble	76642	73875	76642	67384
Dilip Kumar Pawar	26265	26265	26265	25499
DineshKumar Pandey	20445	19595	20445	8644
Hiren Kirit Gandhi	18285	14645	18285	7535
Jagadish Ramashankar Jani	101270	100048	101270	73142
Kirit Shantilal Gandhi	102265	100232	102265	43425
Vijay Kumar Bohra	41355	41255	41355	22586
Total	**452640**	**437620**	**452640**	**308395**

17. From the above table and the documents available on record I find that,

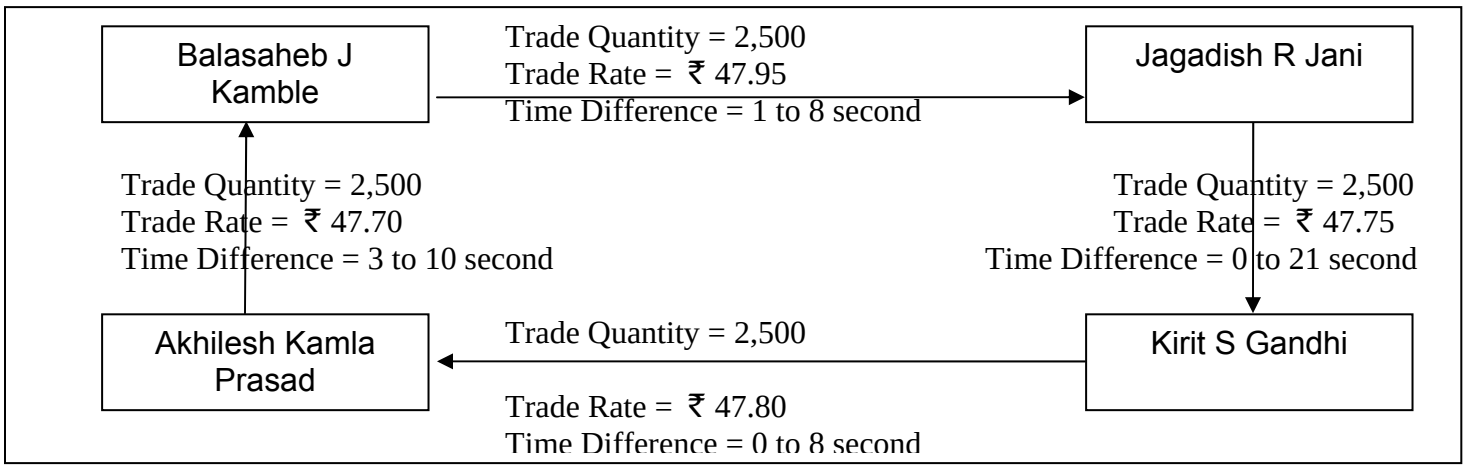
- Total trading quantity during the investigation period was 57,43,409 shares.
- Total trading quantity of the Group during the investigation period was 9,05,280 shares.
- Out of total traded quantity, Noticee had traded in 2,02,540 shares (i.e. 1,01,270 shares purchased and 1,01,270 shares sold) amounting to 3.52% of total market volume during the investigation period.
- Out of total traded quantity, Noticee had traded 1,73,190 shares within the Group (i.e. 1,00,048 shares were purchased from the Group and 73,142 shares were sold within the Group) amounting to 3.01% of total market volume and 19.13% of total traded quantity of the Group during the investigation period.
- Further, 1,51,084 shares (i.e. 77,942 shares purchased and 73,142 shares sold) traded by the Noticee amounting to 2.63 % of total market volume during the investigation period were in the nature of synchronized and circular transactions with the Group.

18. Further from the trade and order log, I find that during the period of about three months i.e. from October 19, 2006 to January 03, 2007, 38 instances of circular trading (complete circles among the Group entities) were observed. Out of these 38 instances Akhilesh Kamla Prasad was involved in 23 instances, Dinesh K Pandey was involved in 5 instances, Balasaheb J Kamble was involved in 28 instances, Kirit S Gandhi was involved in 37 instances, Vijay K Bohra was involved in 12 instances, Dilip K Pawar was involved in 8 instances and Noticee was involved in 38 instances. Some of the instances of circular trading are as follows:

- Circular pattern observed on November 10, 2006 among the Group is as under:



- Circular pattern observed on November 20, 2006 among the Group is as under:



Thus from the above, I find that

- The trades executed among the Group were synchronized and circular in nature.
- The buy and sell order quantities and rates were almost similar.
- The time difference between the buy and sell order entered were negligible.
- The net positions of the Group entities during the investigation period were almost zero.

19. In relation to the circular pattern observed on November 10, 2006, the Noticee vide reply dated March 20, 2012 stated that the number of shares traded between the Noticee and Shri Kirit S Gandhi were 800 shares instead of 1500 shares. On scrutiny of trade and order log, I find that on November 10, 2006, the number of shares traded between the Noticee and Shri Kirit S Gandhi were 1500 shares as against the claim made by the Noticee that 800 shares were traded between the Noticee and Shri Kirit S. Gandhi. Further, in relation to the circular pattern observed on November 20, 2006, the Noticee vide reply dated March 20, 2012 stated that the number of shares traded between the Noticee & Shri Balashaheb J Kamble were 1000 shares instead of 2500 shares and between the Noticee & Shri Kirit S Gandhi were 500 shares instead of 2500 shares. Upon scrutiny of trade & order log, I find that on November 20, 2006, the number of shares traded between the Noticee & Shri Balashaheb J Kamble were 2500 shares and between the Noticee & Shri Kirit S Gandhi were 2500 shares. Thus, argument put forward by the Noticee in this regard does not hold any merit.

20. Although in his letter dated March 20, 2012 Noticee has claimed that he has not executed any circular transactions, during the course of hearing the AR has accepted that the Noticee had indulged in circular trading with other members of the Group which resulted in volume build-up. Further, I find that the patterns of circular trading among the Group are in the manner [A→B→C→D→A]. Almost same numbers of shares were rotated in a

circular manner among the Group on daily basis and extract of the details from KYC & UCC corroborated with the pattern depicts that the trades were planned with a manipulative intent. Thus, the said circular trading was not just a co-incidence and the same indicates their concerted effort and manipulative intent to increase the price of the scrip by creating false and artificial volume in the scrip. Due to the concerted effort of the Group the price of the scrip had increased from ₹43 to ₹60 during the period of about three months i.e. from October 19, 2006 to January 03, 2007. This gave an impression to other investors in the market that the scrip of FDIL was being actively traded at the prevailing price but actually this was not the case.

21. Further, the pattern of circular and synchronized trading clearly points out that the transactions were carried out with the intention that the orders of particular clients should match and there was a prior arrangement with respect to these large number of transactions. These transactions resulted in creation of artificial volume. The pattern of trading indicates several instances where the time difference between buy and sell orders was less than 30 seconds. No unknown person can trade continuously with same set of persons by putting orders in such pattern contributing significantly to total volume in the market. This shows that the clients who were connected to each other were trading with each other through circular and synchronized order placement with the knowledge of the brokers. Thus, the increase in the trading volume in the security can be attributed to the trades done by the Group.

22. Therefore, I am of the view that the aforesaid trades of the Group were with the intention not to transfer the beneficial ownerships of the shares of FDIL but with an intention to operate only as a device to inflate, depress or cause fluctuations in the price of shares of FDIL for wrongful gains. Thus the Noticee through collusion with the other members of the Group has transacted in the shares of FDIL in such a manner that it led to creation of

artificial volumes in the scrip and a false market leading to price movement in the scrip which lacked presence of any sort of fundamentals.

23. Hon'ble Securities Appellate Tribunal (hereinafter referred as **"SAT"**), in Ketan Parekh *Vs.* Securities & Exchange Board of India (Appeal No. 2 of 2004), observed that, *"A synchronized transaction even on the trading screen between genuine parties who intend to transfer beneficial interest in the trading stock and who undertake the transaction only for that purpose and not for rigging the market is not illegal and cannot violate the regulations. As already observed 'synchronisation' or a negotiated deal ipso facto is not illegal. A synchronised transaction will, however, be illegal or violative of the Regulations if it is executed with a view to manipulate the market or if it results in circular trading or is dubious in nature and is executed with a view to avoid regulatory detection or does not involve change of beneficial ownership or is executed to create false volumes resulting in upsetting the market equilibrium. Any transaction executed with the intention to defeat the market mechanism whether negotiated or not would be illegal. 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. The nature of the transaction executed, the frequency with which such transactions are undertaken, the value of the transactions, whether they involve circular trading and whether there is real change of beneficial ownership, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn."*

24. In my view, the Noticee through the said artificial trades interfered with the market equilibrium and thereby affected the manipulation of price and volume of the said scrip. The trades executed by the Noticee and the Group 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 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."*

25. Hon'ble SAT, in Nirmal Bang Securities Pvt. Ltd Vs SEBI (Appeal no. 54-57/2001), observed as follows: - *"BEB has been charged for synchronized deals with First Global. I have examined the data provided by the parties on this issue. I find many transactions between BEB and FGSB. There are many instances of such transactions. I find the scrip; quantity and price for these orders had been synchronized by the counter party brokers. Such transactions undoubtedly create an artificial market to mislead the genuine investors. Synchronized trading is violative of all prudential and transparent norms of trading in securities. Synchronized trading on a large scale can create false volumes. The argument that the parties had no means of knowing whether any entity controlled by the client is simultaneously entering any contra order elsewhere for the reason that in the*

online trading system, confidentiality of counter parties is ensured, is untenable. It was submitted by the Appellants that it was not possible for the broker to know who the counter party broker is and that trades were not synchronized but it was only a coincidence in some cases. Theoretically this is OK. But when parties decide to synchronize the transaction the story is different. There are many transactions giving an impression that these were all synchronized, otherwise there was no possibility of such perfect matching of quantity price etc. As the respondent rightly stated it is too much of a coincidence over too long a period in too many transactions when both parties to the transaction had entered buy and sell orders for the same quantity of shares almost simultaneously. The data furnished in the show cause notice certainly goes to prove the synchronized nature of the transaction which is in violation of regulation 4 of the FUTP Regulations. The facts on record categorically establish that BEB had indulged in synchronized trading in violation of regulation 47 of the FUTP Regulations. In a synchronized trading intention is implicit."

26. Keeping in mind the dicta of the SAT as reproduced above, I see no reason to take a different view in the present case.

27. 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 synchronized trades and circular transactions 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. The buy and the sell orders are placed at almost the same time between the counter brokers, with just a difference of few seconds. This proximity in the inputting of orders at the same price and for the same quantity, results in getting them matched, such that there is almost perfect matching in all the trades, with all the three parameters, viz., quantity, price and most importantly, the time

required to conclude the trades, which to a large extent indicates synchronization in the logging in of the orders, albeit executed on the screen of the stock exchange.

28. This is what has transpired in the present case. This trend was not noted in a solitary incident or two. Instead, a large number of synchronized trades got matched regularly, that too only between the same set of clients in the same scrip, during the same period, thus resulted in the circular trades. The phenomenal regularity with which these clients and their brokers were counter-parties, leads one to conclude, that these transactions were effectively meant to be synchronized. 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 FDIL in a way that was not the market determined volumes, in order to induce other persons to invest in the said scrip.

29. The fact is that had the aforesaid discussed trades been executed in the normal course of business, the possibility of such perfect matching would not have been possible. The buy and sell prices of one entity were close to the buy/sell rates of the other entity in all the settlements, such that the trades of these entities were always matched. Greater the number of synchronized trades, the larger is the chance of trades not being genuine in nature, which is bound to affect the market equilibrium. 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 mis-use 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 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. Choosing selective time slots does not appear to be an involuntary action."*

30. Further, the trades as discussed earlier were in the nature of circular and synchronized transactions with the same set of clients on both sides, trading through the same set of brokers. Furthermore, when a client reveals a clear and set pattern/behavior in a particular scrip, such as, execution of a large number of trades, on the same day, in the same scrip, consistently throughout the period and with the same set of clients, then the same is indicative of a concerted level of activity and an element of intent while executing the said deals, precipitated due to a mutual understanding. 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 violation 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. Furthermore, price manipulation does not only involve only manipulation in the prices of the scrip but also includes building up of volumes.

31. The pattern of trading of the Noticee creates doubts about the genuineness of their trades. I am of the view that the trades carried out were fraudulent and manipulative in nature. Generally, in a scrip where the liquidity is high, the counter parties are scattered. However, in the present case, the records show that most of the trading carried out by the Noticee was with a fixed set of entities.

32. In order to establish the fraudulent nature of trades indulged in by the Noticee, 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, ……"*

33. As detailed above, the acts of the Noticee clearly created false and misleading appearance of trading in the shares of FDIL and he did not act in

a bonafide manner. The facts of the case highlight the Noticee's involvement, by execution of continuous synchronized and circular trades in a substantial manner, in the manipulation of price/volume of the shares of FDIL which led to creation of artificial volumes and misleading appearance of trading in the said shares on account of collusive activities with the other entity as discussed in the preceding paragraphs. As the transactions executed by the Noticee were circular and synchronized in nature, there does not appear to be any genuine trading interest in the scrip. All these, resulted in violation of the provisions of regulations 4(1), 4(2)(a), 4(2)(b)and 4(2)(g)of the PFUTP Regulations.

34. Generally, synchronized trades 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.

35. In view of the foregoing, the allegation of violation of provisions of regulations 4(1), 4(2)(a), 4(2)(b)and 4(2)(g)of PFUTP Regulations by the Noticee stands established.

36. 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…"*.

37. Thus, the aforesaid violations by the Noticee make him liable for penalty under Section 15HA of SEBI Act which read as follows:

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

38. While determining the quantum of penalty under section 15HA of SEBI Act, 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."*

39. The Noticee in his reply dated March 20, 2012 submitted that the quantum based penalty is irrational and illogical and cited the order passed by the Hon'ble SAT in the matter of M/s Sparkline Mercantile Co. Pvt. Ltd. on January 16, 2012 and requested that the lowest amount of the penalty imposed by the undersigned vide order dated January 31, 2012 against Shri Dinesh Kumar Pandey in the said matter be considered in his case as the charges are identical and hence differential treatment cannot be made. I have perused the said order passed by Hon'ble SAT and find that total volume traded in the scrip of M/s Jindal Drilling & Industries Limited by Sparkline Mercantile Co. Pvt. Ltd., Hem Kanak Mercantile Pvt. Ltd. and Samradha Finstock Pvt. Ltd were almost same i.e. 6,35,589 shares (5.54%), 5,36,948 shares (4.68%) and 5,29,900 shares (4.61%)

respectively. Further, in respect of the order passed by me against Shri Dinesh Kumar Pandey on January 31, 2012 in the same matter, I am of the view that the total volume traded by Dinesh Kumar Pandey in the scrip of FDIL was 40,890 shares (0.71% of total market volume) and out of the said shares, 19,739 shares (0.34% of total market volume) were circular in nature within the Group whereas the total volume traded by the Noticee in the scrip of FDIL was 2,02,540 shares (3.52% of total market volume) and out of the said shares, 1,52,084 shares (2.63% of total market volume) were circular in nature within the Group. Moreover, during the period of about three months i.e. October 19, 2006 to January 03, 2007, Dinesh Kumar Kumar Pandey was involved in 5 instances of circular trading whereas the Noticee was involved in 38 instances of circular trading. In view of the above, the Noticee was more accountable in creating artificial volume in the scrip of FDIL and thus argument put forward by the Noticee in this regard does not hold any merits.

40. I have considered the volume of trading done by the Noticee in the scrip of FDIL. 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. Suffice to state that keeping in mind the practices indulged in by the Noticee, gains per se were made by the Noticee 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. 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.

ORDER

41. After taking into consideration all the facts and circumstances of the case, I impose a penalty of ₹ 4,00,000 (Rupees four lakh only) under section 15HA of SEBI Act, on the Noticee which will be commensurate with the violations committed by him.

42. The Noticee shall pay the said amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Ms. Jeny John, Deputy General Manager, Investigations Department - 2, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

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

Date: **March 30, 2012** **PARAG BASU**

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