BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. BM/AO- 28/2012]

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

Ajmera Associates Pvt. Ltd.

SEBI Registration No: INB011185833

(PAN. AADCA7062J)

In the matter of M/s Advik Laboratories Ltd.

FACTS OF THE CASE IN BRIEF

1. The shares of M/s Advik Laboratories Limited (hereinafter referred to as **"ALL"**) are listed at the Bombay Stock Exchange (hereinafter referred to as **"BSE"**). Due to abnormal increase in volume and price in the shares of ALL during the period from September 2003 to January 2004 (hereinafter referred to as "**investigation period**") Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted investigation in trading in the scrip of ALL. It was observed that during the investigation period the price of the scrip opened at ₹19.91 on September 29, 2003, touched its high of ₹31.70 on December 30, 2003 – 59% rise in 67 trading days and closed at ₹29.30 on January 5, 2004.

2. Investigation observed that the company ALL made a number of premature and misleading corporate announcements. During this time the promoters of ALL viz: Aditya Jain, Divya Jain, Shakuntala Jain, Kumud Jain, Rajkumar Jain, Vivek Jain, Shivani Jain and Advik Finance and Properties Private Limited transferred shares to the connected/related entities and started trading actively among themselves and entered into synchronized transactions in the market. This allegedly created artificial volume and generated more demand in the scrip and as a result, the share price increased and subsequently the promoters offloaded their own shares.

3. It was alleged that one of the brokers, Ajmera Associates Pvt. Ltd. (hereinafter referred to as the "**Noticee**") traded on behalf of promoters of ALL and entities related/connected to the promoters and created artificial volume of trading and manipulated the price of the shares of ALL. It was, therefore, alleged that the Noticee had violated the provisions of regulations 4 (1), 4 (2) (a), (b), (e) and (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 2003 (hereinafter referred to as **"PFUTP"**) and Clause A(1), A(2) , A(3), A(4) and A(5) 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 (hereinafter referred to as "**Brokers Regulations**").

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as Adjudicating Officer vide order dated April 29, 2010 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 PFUTP and Brokers Regulations committed by the Noticee.

SHOW CAUSE NOTICE, HEARING AND REPLY

5. Show Cause Notice No. EAD-6/BM/JR/21703/2010 dated September 30, 2010 (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 against the Noticee and penalty be not imposed on the Noticee under sections 15HA and 15HB of SEBI Act for the alleged violation specified in the said SCN.

6. The Noticee replied to the SCN vide letter dated November 12, 2010 stating inter alia the following:

- *Our only six clients' trading has been considered objectionable. Ms. Kumud Jain has only sold ALL shares and delivered them. Her delivery based trading could not raise any suspicion. Her quantum of alleged synchronized sale among purported group is insignificant – 0.23%. We did not synchronize any of her sale order with anyone as alleged or otherwise. Her name does not appear as promoter (please see para 2 of SCN).*
- *Our clients' total volume of trading in ALL scrip is very much less compared to market volume in the said scrip.*
  Alleged synchronized buy among group % to market gross – 0.76%

  Alleged synchronized sell among group % to market gross – 1.85%

  From the above it is self-evident that about 99% - 98% volume of clients' trading was not regarded as objectionable or wrongful. Such miniscule % of synchronized volume (assuming but without admitting it was so) was a drop in the ocean.

- *The transactions of the client Mr. Manish Pancholi were of normal intra-day (jobbing) nature. He traded in other scrips also on the same days in the same (intra-day) manner, style and pattern.*
- *The clients – "Jains" – have sold shares on a net basis. They met their obligations of deliveries of shares and there was no default of any nature on their part.*
- *We deny that Mr. Manish Pancholi used to place orders on behalf of the alleged promoters with us. We once again reiterate that Ms. Shivani Jain used to place orders on behalf of herself, Mr. Rajkumar Jain , Mr. Vivek Jain and Kumud Jain.*
- *We state that BSE permitted trading in the scrip of ALL and trading windows were kept open at the relevant time. It was therefore for investors to decide whether to trade in the said scrip or not. We merely acted as an agent of the clients (principal) and carried out their orders in the normal and ordinary course of business.*

- *BSE never cautioned us – in fact since the end entities were different, even BSE perhaps could not have noticed alleged matching (as the end clients' PAN numbers which are mapped on the system must be different) of orders.*
- *We deny that we were involved in any manner in any synchronized trading in ALL scrip as alleged. We were not aware about clients' intention, if any, to carry out manipulative trades. The clients' trading pattern of intra-day nature, delivery based trading etc. could not raise any suspicion. The clients met their settlement obligations in time regularly.*
- *We were not involved in any pre-arrangement of synchronization and artificial volume creation exercise in the shares of ALL as inferred or otherwise. We deny that we were a part of any group or colluded with anyone as alleged or otherwise. We did not synchronize any trade with anyone else – had we been part of any group. Our such objectionable volume would have been substantial, every day, at every price etc. We did not indulge into off market dealings, third party trades, side deals, etc. in the said scrip. There was no reason/ motive for us to indulge in any kind of irregularity in trading.*
- *Some of the clients had done intra-day trading and whatever quantity was bought was sold during the day – To treat such trading as synchronized simplicitor in a wholesale manner is farfetched, a far cry and absurd. Every client follows a different strategy depending upon his perception, risk appetite, financial capacity etc. factors.*
- *We have not executed any synchronized trades for our clients as alleged or otherwise (who are treated as Promoters). Assuming but without admitting, synchronized trades took place – but by whom ? We clarify that we had no knowledge that our clients (if any) were executing such trades from the other end directly or indirectly (through others). It is pertinent to mention that SEBI has furnished the same order log / trade log of purported synchronized, which it submitted earlier (first round) with its SCN dated 25.1.2008 which contained some errors while calculating time difference in orders keyed-in on some days (Enclosing an extract of the said annexure containing erroneous data as Annexure II). It is not even stated as to how (in what mode / manner) executed trades that were synchronized with the counter party brokers and clients.*
- *Further, the trade data furnished in the SCN is that part of orders which got converted into trades. The said data did not include unexecuted orders, modified orders and cancelled orders. On account of not making available these orders data, the analysis of data furnished would remain one sided, incomplete, incorrect and hence the answers to the charges could not be proper, complete thus resulting into violation of provisions of natural justice. Executed / unexecuted / modified / cancelled orders would throw light on the total number of orders keyed-in into the system and the history of each order that got eventually fully executed into trades, partly executed and not executed at all. In order to establish meeting of minds, one has to consider executed, non-executed (pending, modified, deleted) orders both.*
- *It appears that the criteria or methodology adopted for treating our clients' trading as synchronized etc. is not correct as the said client did intra-day trading and in view of a few brokers actively participating in the trading in ALL scrip, the orders got matched between / among such parties only. We were not aware of any*

wrongdoing or of any design of our clients at the relevant time. It is pertinent to mention that BSE had not issued any cautionary message to us.

- *We deny that we synchronized our clients' purchases and sales orders with orders of other entities in 'Group'. The basis of including in the group is only trade data which is the outcome thrown out of the trading module of the system. The SCN is silent as to the basis on which we were included in the 'Group'. Just because the clients' orders got matched with a few counter parties, it can not be inferred that they were synchronized. Our role, involvement and participation in the alleged synchronization is not even ascertained independently. The report is silent about nature of mutual understanding, with whom, how, when, gain on account of such understanding, etc., details. How were we different from others who were outside 'the group'?*
- *We do not agree with the above findings qua us. Assuming but without admitting, there is some force in the observation that "As the time difference between most of the buy and sell orders executed was very negligible, it is alleged that such transactions are in the nature of synchronized trades", we clarify that such transactions do amount to a findings of 'an element' of fraud and unfair trade practices indulged in by us. Further it is not shown as to how and in what manner we were part of 'a concerted effort with intent to create artificial volume of trading and manipulate the price of the scrip.' It is submitted that only synchronization may perhaps lead to artificial volume but not to manipulation of price of the scrip. Be that as it may, our clients' objectionable volume itself was miniscule as is stated in the SCN. And therefore as far as we are concerned there was no wrongdoing on our part. The findings recorded qua us are therefore fallacious and absurd.*
- *We executed trades in ALL scrip as per instructions of the clients and the same were not intended to operate as a device to inflate, depress or cause fluctuation in the market price of the aforesaid scrip. We carried out trades at prevailing market prices and during market hours. Intra-day based trades and square-up trades are perfect legitimate activities for anyone participating in the market place. There was no wrongful gain to us.*
- *We did not do any proprietary dealing in the said scrip to operate only as a device to inflate, depress or cause fluctuations in the price in the said scrip for wrongful gain or avoidance of loss.*
- *There is no observation that trades executed by us were with some malafide intention and we knowingly involved ourselves in any undesirable activity in the scrip. No nexus is established with facts as to our role, involvement and participation in any schematic design in the scrip. We did not do any off market trade. It appears that even our normal role as a stockbroker in ALL scrip transactions has been blown out of proportion and put in improper perspective so as to create some prejudice against us.*
- *We have maintained high standards of integrity, promptitude and fairness in the conduct of our business. We have always honored our obligations to the Stock Exchanges. We have ensured that there are no financial/ settlement default takes place on the part of the client. This inter alia included collection of margin at our end.*

- *We acted with due skill, care and diligence while carrying out transactions in the ALL scrip.*
- *Due Skill and care would mean, at least such care and skill as a man of ordinary prudence and caution would exercise under similar circumstances.*
- *It would further mean that a stock-broker shall act in such a way that a person of ordinary competence would act in normal circumstances in carrying out the various activities and functions and affairs of his business and would remain careful and diligent so that noting untoward can happen to him and / or to the market.*
- *We are wrongly lumped, bunched, clubbed and included in the purported 'group' of about 5 brokers and 10 clients (for buy side) and 4 brokers and 7 clients (for sale side). There is no connection which has been established between us and the counter brokers or their end clients who traded in the ALL scrip.*
- *SEBI has treated and equated normal matching of orders through screen based trading as synchronization. As far as we are concerned there was no prior meeting of minds with anyone. We were not aware about the meeting of mind of our client(s), if any with others. Hence the observation of synchronization of trades from our side is erroneous and absurd qua us.*

7. In the interest of natural justice, an opportunity of hearing was given to the Noticee on December 13, 2010 vide notice dated December 3, 2010. Vide letter dated December 20, 2010, the Noticee sought an adjournment for the personal hearing. A fresh opportunity of hearing was given to the Noticee on January 19, 2011 vide notice dated January 3, 2011. Mr. Ashish K. Ajmera, Authorized Representative of the Noticee (hereinafter referred to as "**AR**"), appeared on behalf of the Noticee. The AR was provided with revised synchronized trading details pertaining to his trades with the counter party clients and he submitted that he wanted to file a written reply. However, no reply was received from the Noticee.

8. Subsequent to this, the Noticee applied for consent hence the proceedings were kept in abeyance. Vide letter dated January 25, 2011, the Noticee informed the undersigned that it has applied for consent. The High Powered Advisory Committee rejected his consent application on October 17, 2011. Hence, the adjudication proceedings were recommenced.

9. Vide letter dated March 1, 2012, the Noticee was once again given an opportunity of personal hearing. Vide letter dated March 15, 2012 the same was cancelled and the Noticee was reminded to submit his reply after the receipt of the revised synchronized trading details. Vide email dated March 20, 2012 the Noticee requested for the revised synchronized trading details. Vide letter dated March 21, 2012, the Noticee was provided with the required data and a fresh opportunity of hearing was given to it on March 30, 2012. The AR appeared and requested that he be provided with the data of the total orders and trades executed by it. On his request, the required data was sent to it vide letter dated April 17, 2012 and it was informed that if no reply is received by the undersigned on or before April 24, 2012, the adjudication proceedings shall be proceeded with. Till the date of this order no reply has been received from the Noticee.

CONSIDERATION OF ISSUES AND FINDINGS

10. I have carefully examined the SCN, the submissions made by the Noticee and the documents available on record. The allegations against the Noticee are as follows:

    i. The Noticee indulged in synchronized trading in concert with other brokers on behalf of the promoters and connected/related entities which created artificial market.

    ii. The Noticee acted in concert with the promoters, related/connected entities and the brokers to create artificial volumes in the scrip which led to price manipulation during the investigation period.

    In view of the above it was alleged that the Noticee violated the provisions of regulations 4(1), 4(2)(a), (b), (e) and (g) of PFUTP and Clause A(1), A(2) , A(3), A(4) and A(5) of Code of Conduct for Stock Brokers as stipulated in Schedule II under Regulation 7 of the Brokers Regulations.

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

a) Whether the Noticee violated regulations 4(1), 4(2)(a), (b), (e) and (g) of PFUTP and Clause A(1), A(2) , A(3), A(4) and A(5) of Code of Conduct for Stock Brokers as stipulated in Schedule II under Regulation 7 of the Brokers Regulations?

b) Does the violation, if any, on the part of the Noticee attract monetary penalty under sections 15 HA and 15 HB 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 and Brokers Regulations, which reads as under:

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

(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.

<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 at Schedule II.

SCHEDULE II

Code Of Conduct For Stock Brokers

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.
(3) MANIPULATION: A stock-broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains.
(4) MALPRACTICES: A stock-broker shall not create false market either singly or in concert with others or indulge in any act detrimental to the investors interest or which leads to interference with the fair and smooth functioning of the market. A stock-broker shall not involve himself in excessive speculative business in the market beyond reasonable levels not commensurate with his financial soundness.
(5) COMPLIANCE WITH STATUTORY REQUIREMENTS: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.

13. Upon careful perusal of the material available on record, I find the following:

(i) The shares of ALL were listed on the Bombay Stock Exchange (hereinafter referred to as "**BSE"**), Ahmedabad Stock Exchange, Delhi Stock Exchange and Madras Stock Exchange at the relevant time. SEBI conducted an investigation to investigate in respect of buying, selling and dealing in the shares of ALL during the period September, 2003 to January, 2004. Trading in the securities of ALL had taken place on BSE, whereas no trading was reported in other exchanges, during the period of investigation.

(ii) The share price of ALL opened at ₹19.91 on September 29, 2003, touched its high of ₹31.70 on December 30, 2003 - 59% rise in 67 trading days and closed at ₹29.30 on January 5, 2004. The volumes also registered sharp rise from daily average of 400 shares before the investigation period to daily average of 8,50,000 shares during the investigation period.

(iii) During September 26, 2003 to December 23, 2003, the company made certain announcements about buying back of shares, proposed tie up with Max Medical UK, plans about opening manufacturing/packaging facilities at UAE, tie up with Integral Pharma Sev. Ltd., UK and opening offices at Brazil, Latin America, bagging an export order worth ₹20 crore from Qmedic & Wayne LLC, UAE etc. This generated demand in the scrip and as a result, the share price went up and reached its highest i.e., ₹31.70 on December

31, 2003. These announcements were alleged to be pre-mature and misleading with the intention of creating an artificial demand in the market.

(iv) I observe that the announcements were misleading have already been established by SEBI, Whole Time Member vide dated October 27, 2010 which is available on the public domain.

(v) I find that the price and volume of the company increased subsequent to the corporate announcements. The price of the scrip opened at ₹19.91 on September 29, 2006, touched its high of ₹31.70 on December 30, 2003 - 59% rise in 67 trading days and closed at ₹29.30 on January 5, 2004. The volumes also registered sharp rise from daily average of 400 shares before the investigation period to daily average of 8,50,000 shares during the investigation period.

(vi) During the time when the misleading corporate announcements were made the promoters of ALL and related/connected entities sold off their shares in the market. The summary of the trading details is as follows:

S. NO	MEMBER NAME & CODE	CLIENT NAME	CLIENT CODE	GROSS BUY	BUY AMONG GROUP	SYN. BUY AMONG GROUP	Synch SELL among group % Market gross	GROSS SELL	SELL AMONG GROUP	SYN. SELL AMONG GROUP	Synch SELL among group % Market gross
1	**Broker-M.M.UPADH.-424**	**SHAKUNTALA JAIN**	7014	21100	10071	**901**	**0.00**	32130	**15688**	**0**	**0.00**
		DIVYA JAIN	14473	1995488	950095	**325454**	**0.54**	2176137	**913832**	**560282**	**0.93**
		AMIT PANDYA	40247	184761	91779	**42562**	**0.07**	300956	206274	**155686**	**0.26**
		ADITYA JAIN	40258	7179408	4722082	**1356219**	**2.24**	8710060	5355696	2583229	**4.27**
	SUB TOTAL 1			**9380757**	**5774027**	**1725136**	**2.85**	**11219283**	6491490	3299197	**5.46**
	% TO MARKET VOLUME			**15.52**	**9.55**	**2.85**		**18.56**	**10.74**	**5.46**	
2	**Broker-SOUTH .SH. -182**	**CHIRAG PUJARA**	P203	6025511	5256481	**1463356**	**2.42**	7988531	3840323	1900858	**3.14**
	SUB TOTAL 2			**6025511**	**5256481**	**1463356**	**2.42**	**7988531**	**3840323**	1900858	**3.14**
	% TO MARKET VOLUME			**9.97**	**8.70**	**2.42**		**13.22**	**6.35**	**3.14**	
3	**Broker-S.M. NISSAR -707**	**OWN A/C**	B707	8838029	7042842	4657531	**7.70**	8838021	6138041	1626706	**2.69**

	SUB TOTAL 3			**8838029**	**7042842**	**4657531**	**7.70**	**8838021**	**6138041**	**1626706**	**2.69**
	% TO MARKET VOLUME			**14.62**	**11.65**	**7.70**		**14.62**	**10.15**	**2.69**	
4	**Broker-SHRIPAL JAIN -646**	**OWN A/C**	3001, 3002, 3004	**6225397**	**4120301**	1398977	**2.31**	**6225397**	2696519	1384310	**2.29**
	SUB TOTAL 4			**6225397**	**4120301**	**1398977**	**2.31**	**6225397**	2696519	1384310	**2.29**
	% TO MARKET VOLUME			**10.30**	**6.82**	**2.31**		**10.30**	**4.46**	**2.29**	
5	**Broker-AJMERA ASSOC. –911**	**AMIT PANDYA**	A186	132780	98525	31619	**0.05**	363328	310108	88950	**0.15**
		KUMUD JAIN	K176	0	0	0	**0.00**	895768	**458198**	139344	**0.23**
		MANISH PANCHOLI	M180	899544	730630	155724	**0.26**	887712	705421	59965	**0.10**
		RAJKUMAR JAIN	R173	42000	33899	2000	**0.00**	377000	306757	135328	**0.22**
		SHIVANI JAIN	S571	165000	71261	38701	**0.06**	204054	129729	**77322**	**0.13**
		VIVEK JAIN	V145	1208592	787544	228717	**0.38**	2564020	1657350	616163	**1.02**
	SUB TOTAL 5			**2447916**	**1721859**	**456761**	**0.76**	**5291882**	**3567563**	**1117072**	**1.85**
	% TO MARKET VOLUME			**4.05**	**2.85**	**0.76**		**8.75**	**5.90**	**1.85**	
6	**Broker-PARIVAR FIN. -193**	**ADVIK FINANCE & PROPERTIES PVT LTD**	GEAFP	0	0	0	**0.00**	21080	13250	8290	**0.01**
		MANOJ BHATIA	GEMB1	0	0	0	**0.00**	243000	**139195**	**24890**	**0.04**
		RAJESH RAM	GERR1	0	0	0	**0.00**	372426	271421	54203	**0.09**
		THOMAS KUTTY	GETK	0	0	0	**0.00**	264185	199865	29316	**0.05**
	SUB TOTAL 6			**0**	**0**	**0**	**0.00**	**900691**	623731	116699	**0.19**
	% TO MARKET VOLUME			**0.00**	**0.00**	**0.00**		**1.49**	**1.03**	**0.19**	
7	**Broker-PILOT CREDIT CAP. –909**	**ADVIK FINANCE & PROPERTIES PVT LTD**	4523	0	0	0	**0.00**	500000	243494	125536	**0.21**
		CHIRAG PUJARA	5507	28000	25049	5000	**0.01**	421333	**294529**	141983	**0.23**
		DIVYA JAIN	6016	100000	44230	9150	**0.02**	300000	89099	3550	**0.01**
	SUB TOTAL 7			**128000**	**69279**	**14150**	**0.02**	**1221333**	**627122**	**271069**	**0.45**
	% TO MARKET VOLUME			**0.21**	**0.11**	**0.02**		**2.02**	**1.04**	**0.45**	

	Grand Total	**GRAND TOTAL**		**33045610**	**23984789**	**9715911**	**16.07**	**41685138**	**23984809**	**9715919**	**16.07**
	% TO MARKET VOLUME			**54.67**	**39.68**	**16.07**		**68.96**	**39.68**	**16.07**	

(vii) The entities found connected /related to the promoters are as follows:

- Amit Pandya: Received shares in offmarket from promoters, Vivek Jain and Divya Jain. Further as per his submission he was known to Vivek Jain and Divya Jain.
- Chirag Pujara: Received shares from Amit Pandya in the offmarket.
- Manish Pancholi: Introduced Rajkumar Jain, Vivek Jain, Shivani Jain and Amit Pandya to the Noticee. He was also the remissier of the Noticee.
- Manoj Bhatiya: Employee of ALL
- Rajesh Ram: Employee of ALL
- Thomas Kutty: Employee of ALL

(viii) The above promoters and their related/connected clients and brokers altogether purchased 3,30,45,610 shares and sold 4,16,85,138 shares, which accounted for around 54.67% and 68.96% respectively of the total volumes during the investigation period. These entities sold 86,39,528 shares on net basis.

(ix) It is observed that the Noticee bought 24,47,916 shares and sold 52,91,882 shares during the investigation period while trading for its clients, viz., Amit Pandya, Kumud Jain, Manish Pancholi, Rajkumar Jain, Shivani Jain and Vivek Jain.

(x) During the period when the Noticee was trading on behalf of the above clients the price of the scrip went up from ₹22.20 to ₹31.55. When these entities stopped trading from January 6, 2004 the price of the scrip went down to ₹19.25 hitting the lower circuit almost everyday along with sharp decline in volume.

(xi) Further analysis of trade and order log revealed that the promoters, the connected/related entities trading through the Noticee and other brokers traded among them and executed trades which were synchronized in nature. It is observed that in most of the instances the orders (both buy and sell of the Noticee) were synchronized by price and time and in certain cases the orders were synchronized by price, time and quantity. The trades were synchronized with the counter party brokers viz: S P J Stock Brokers Pvt. Ltd., Pilot Credit Capital, M M Upadhyay, S M Nissar, Parivar Finance and Systematix Shares and Stocks (India) Ltd. as follows

	No. of days	**No. of instances**	**Time Difference**	**No. of shares**	**% to the total market volume**
Buy	40	466	Less than a minute	4,56,761	0.76%
Sell	38	1215	Less than a minute	11,17,072	1.85%

(xii) The Noticee, while trading on behalf of the promoters and entities related/connected to the promoters bought 4,56,761 shares and sold 11,17,072 shares which were in synchronized manner. These trades constituted 18.66% of its gross buy volume (0.76% of the total market buy volume) and 21.11% of its gross sell volume (1.85% of the total market sell volumes. From the above it can be seen that such pattern continued for a number of days with specific set of brokers.

(xiii) I find that the Noticee has not dealt in its own account but has dealt solely for its clients, viz., Amit Pandya, Kumud Jain, Manish Pancholi, Rajkumar Jain, Shivani Jain and Vivek Jain. Hence the question for my consideration is whether the Noticee was aware about the manipulative transactions of its clients and acted in concert with its client in manipulative transactions. The Noticee had submitted that its transactions were carried out in the normal course of business and that it had no relation with its clients, except Manish

Pancholi who was its remissier. The Noticee also submitted that it had acted on the instructions of its clients and had no knowledge of the identity of the counterparty clients or brokers. There is no evidence on record to show that the Noticee was related to the clients, who were the promoters of the company or the counter party brokers. There is nothing on record to show that the Noticee was aware that its clients were the promoters of the company.

(xiv) In the screen based trading mechanism, a trade between the buyer and seller has to match on the screen for execution. Merely because a trade was synchronized by price and time, it cannot be conclusively said that the Noticee had the knowledge of the game plan of its clients unless some corroborative evidence as to connection with the client or collusion with the client and the counter parties are brought out. Investigation has not brought out any connection, directly or indirectly, with the client and the Noticee or with the counter party clients and brokers. As observed from the Noticee's reply the client Shivani Jain was placing the orders on behalf of herself, Rajkumar Jain, Kumud Jain and Vivek Jain. Hence, it was the clients who were responsible for creating huge volume. Apart from these factors I notice that the Noticee has not done any proprietary trading. I find that there is no material on record to establish any manipulative role played by the Noticee. I am also of the view that based on certain conjectures one cannot come to the conclusion that the Noticee had played a role in the trading of the scrip of ALL. Therefore, I find merit in the submissions of the Noticee and observe that the allegations of manipulation against the Noticee are not established.

(xv) I find that the Noticee's synchronized transactions contributed to about 0.76% of the total market buy volume and 1.82% of the total market sell volume which is not very significant to create artificial volume and price fluctuation.

14. Regulation 4(2) (a) of PFUTP 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 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 prohibits any act or omission amounting to manipulation of the price of a security. Regulation 4(2) (g) of PFUTP prohibits from entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security.

15. In the present case, I find that there is no material on record to suggest that the Noticee traded in the scrip of ALL with the intention of creating a false or misleading appearance of trading. Further the investigation report has not brought out how the Noticee has inflated, deflated or caused fluctuation in the price of the scrip. I observe that the trading of shares were delivery based, hence the ownership of the shares traded also changed. Therefore, the allegation of violation of regulations 4(1), 4(2)(a), (b), (e) and (g) does not stand established.

16. The Noticee has also been alleged to have violated the A (1), (2), (3), (4) and (5) of Code of Conduct for Stock Brokers as specified in Schedule II under Regulation 7 of Brokers Regulations. In terms of Clauses A(1), (3), (4) and (5) of 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. It also mandates that the Broker shall not, inter alia, indulge in manipulative transactions with a view to distort the market equilibrium and comply with all the statutory requirements. in the facts and attendant circumstances of the case the allegations made for violation of A (1), (3), (4) and (5) of Code of Conduct for Stock Brokers as specified in Schedule II under Regulation 7 of Brokers Regulations does not stand.

17. However the broker has the responsibility to verify the credentials of its clients to ensure that no malpractice is taking place. The broker is expected to be especially

cautious when trading takes place in an hitherto illiquid scrip like ALL. The profile of the company whose shares are being traded call for a higher level of diligence on part of the Noticee. Also it was observed that the Noticee's clients Rajkumar Jain, Vivek Jain and Shivani Jain share a common address at H-27-W8E/15, Western Avenue, Sainik Farms, New Delhi – 110062, the 'Name of contact person of client' was mentioned as **'**V. K. Jain' in all the three KYC forms, Vivek Jain and Shivani Jain had bank accounts with Hong Kong Bank, K.G. Marg Branch, New Delhi and Shivani Jain was placing orders on behalf of herself, Rajkumar Jain, Vivek Jain and Kumud Jain. All these bring out the inter-relationship between the clients who were trading in huge quantity through the Noticee and were synchronizing their trades with the other entities who were related. The fact that they were offloading shares in large quantities should have aroused its suspicion and it should have been more cautious in its dealing. The Noticee was expected to be diligent and use required skill and care while acting as a broker, in which I find the Noticee has failed. The Noticee cannot plead complete ignorance and shrug off its responsibility as a broker.

18. In view of the above, I find that the Noticee violated clause A(2) of the Code of Conduct prescribed under the provisions of regulation 7 of Brokers Regulations.

19. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) held that "*once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow"*.

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

Penalty for contravention where no separate penalty has been provided

15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.]".

21. While determining the quantum of penalty under section 15HA, 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."*

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 the brokers. The Noticee let the clients carry out the transactions for a number of days. Hence, the default was repetitive in nature.

ORDER

23. After taking into consideration all the facts and circumstances of the case, I impose a penalty ₹1,00,000/- (Rupees One lakh only) under section 15HB of SEBI Act, on the Noticee which will be commensurate with the violation/s committed by it.

24. 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. Rachna Anand, Deputy General Manager, Investigations Department - 10, SEBI

Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

25. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: **May 3, 2012**
Place: **Mumbai**

BARNALI MUKHERJEE
ADJUDICATING OFFICER