BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.: AIL/AO/SKS/SG/DCR/03/2012]

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

Mr.Dhirendra Rajitram Shukla

PAN: Not Provided

In the matter

M/s Axon Infotech Ltd

FACTS IN BRIEF

1. Aesthetic Investments Limited was incorporated on August 17, 1982 as a limited liability company with the object of Investment & Finance. Subsequently, the name was changed to M/s Axon Infotech Ltd. (hereinafter referred to as 'AXON' or 'the company' or 'Axon') on November 05, 1999 to diversify into Information & Technology and Software Development Business. AXON has its registered corporate office at Mumbai. The shares of AXON are listed on the Bombay Stock Exchange Ltd. (hereinafter referred to as 'BSE') The authorized share capital of the company was Rs. 1,00,00,000 divided into 10,00,000 equity shares of Rs. 10/-each. The issued, subscribed and paid up

capital share capital is Rs. 66,00,000 divided into 6,60,000 equity shares of Rs. 10/-each fully paid up. The shares of the company were listed on BSE. AXON came up with a bonus issue of 3:1 on November 15, 2007. The total paid up equity share capital as of now is Rs.2,64,00,000 with face value of Rs.10. The scrip was moved to trade to trade segment by BSE w.e.f. July 28, 2006. Mr. Dhirendra Rajiratnam Shukla also known as Mr. Dhiren Shukla, Mr. Govind Sharma and Mr. Pradeep Dhanuka were acting as directors for AXON and Mr. Dhirendra Shukla was the promoter of AXON during the period of investigation.

2. M/s Kushal Software Ltd presently known as Octant Interactive Technologies Limited (hereinafter referred to as or 'KUSHAL'), having its registered office at Mumbai was engaged in providing total business software solution. The authorized share capital of the company was Rs. 26,00,00,000 divided into 2,60,00,000 equity shares of Rs. 10/-each. The issued, subscribed and paid up capital share capital is Rs. 10,99,60,000 divided into 1,09,96,000 equity shares of Rs. 10/-each fully paid up. The shares of the company were listed at Pune Stock Exchange, Ahmedabad Stock Exchange and Interconnected Stock Exchange. As per the documents submitted by KUSHAL to the BSE, no trading in the scrip has taken place since May 20, 2003.

3. Pursuant to the amalgamation scheme of KUSHAL with AXON, BSE suo moto initiated investigation in the scrip of AXON for suspected violation of price manipulation, Insider trading, takeover code and technical violations for the period March 17, 2006 to September 19, 2006 (hereinafter referred to as 'exchange examination period'), and submitted its report to Securities and Exchange Board of India (hereinafter referred to as 'SEBI').

4. Based on the observations made by BSE, SEBI had conducted an investigation in the scrip of AXON for suspected violation of price manipulation, Insider

trading, takeover code and technical violations for the period from February 22, 2006 to September 19, 2006 was taken up as period of investigation [hereinafter referred to as 'period of investigation'].

5. It was alleged that Mr. Dhirendra Rajitram Shukla (hereinafter referred to as "the noticee" or 'Dhiren Shukla') had manipulated the price of AXON which distorted market equilibrium of the scrip by which the noticee had violated the provisions of Regulation 4(2) (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as "PFUTP Regulations") and therefore, liable for monetary penalty under sections 15HA of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act").

SHOW CAUSE NOTICE, HEARING AND REPLY

6. A show cause notice dated February 5, 2010 (hereinafter referred to as 'SCN') under Rule 4 of the SEBI (Procedure for holding inquiry and imposing penalties by Adjudicating Officer) Rules, 1995, was issued to the Noticee asking him to show the cause as to why an enquiry should not be held against him and why penalty, as prescribed, should not be imposed on under Section 15HA of SEBI Act for the alleged violations of provisions of Regulation 4(2) (e) of PFUTP Regulations. The SCN was sent through Registered Acknowledgement and had been duly received by the noticee as the acknowledgement of the same is available on record. The notice failed to reply to the SCN within 15 days of receipt of SCN.
7. With due consideration to the Principles of Natural Justice, hearing notice dated March 3, 2010 was issued to the noticee for personal hearing before the undersigned on March 10, 2010.
8. The noticee vide letter dated March 6, 2010 has requested for adjournment of aforesaid hearing and also requested 2 weeks time to reply to the said SCN.

9. Considering the aforesaid request of the noticee, the undersigned vide letter dated March 11, 2010 has informed the noticee that the date of personal hearing before the undersigned was adjourned to March 22, 2010 and also informed the noticee that this is the final opportunity given to the noticee and if the noticee has failed to attend the hearing, the matter shall be proceeded ex-parte on the basis of the material available on record.

10. But, once again the noticee vide letter dated March 15, 2010 has made the same request as stated earlier that 2 weeks time to reply to the said SCN may be granted and also scheduled personal hearing before the undersigned may be adjourned.

11. The noticee vide letter dated March 31, 2010 has filed the reply to the SCN and inter-alia submitted as follows:

Reply of the Noticee

a) *The notice expressed that the findings of the investigating officer are vague and incoherent and there are no documents or credible evidence to support the allegations and the manner in which the notice has violated the Regulations.*

b) *The documents or annexure that has been provided to the noticee to comprehend the basis of reasoning arrived at in the SCN are unclear and incomprehensible and the allegations that are leveled against are not specific, but general in nature and he is unable to understand in clear and unambiguous terms the basis for the allegations leveled against the noticee.*

c) *It has been submitted that the allegations leveled against are absolutely false and frivolous, and therefore, the proceedings initiated against the notice may be dropped.*

d) *The noticee has requested that in compliance with the requirements of natural justice, full and inspection be given to the noticee of all documents*

relating to the matter, so that he can give a more comprehensive and detailed reply if required.

e) *It is further submitted that the noticee reserve the right to make further additional submission based on materials facts that may be disclosed to the notice or come to his knowledge in the course of the adjudication proceedings, which has been initiated against the noticee.*

f) *It is submitted that he should not be construed to accept or admit anything stated in this letter except where the same has been expressly admitted by the noticee herein.*

g) *The noticee has submitted his reply to the observations made in the said SCN findings in the investigation report in their chronological order and in two parts in terms of legal and facts.*

h) *Main allegations or disputes leveled by SEBI in the said SCN is that that the noticee has violated the provisions of Regulation 4(2) (e) of the SEBI PFUTP Regulations.*

i) *It is submitted that a genuine transaction by itself cannot attract the provisions of the PFUTP Regulations even if such a transaction had resulted in volume and price variation.*

j) *The noticee has confirmed his submissions made vide replies dated 05.01.2009 and 05.02.2009.*

k) *The noticee was in dire need to arrange for finance to meet his medical expenses. SEBI itself has observed that the said script was an illiquid scrip. At the relevant time of sale the buy volume was low. Under the said circumstances and in view of the urgency to arrange for finance to meet his medical expenses, the noticee had to take a helpless decision to sell the said shares at Rs. 2/- per share though the prevailing market price was higher.*

l) *The notice has stated that he was in dire need to arrange for finance to meet his medical expenses. SEBI itself has observed that the said script*

was illiquid scrip. At the relevant time of sale the buy volume was low. Under the said circumstances and in view of the urgency to arrange for finance to meet his medical expenses, he had to take a helpless decision to sell the said shares at Rs. 2/- per share though the prevailing market price was higher.

m) *The noticee has submitted that at the relevant time of alleged sale, he did not have any trading account with any broker. The noticee only had opened a demat account. Hence, the noticee had to sell the 2,11,200 shares @ Rs. 2/- on 3.04.2006 in the scrip through off market transactions.*

n) *Thus even the motive attributed to the noticee is on the basis of documents and statements of SEBI is not anywhere proved and therefore the application of FUTP Regulations is bad in law and is liable to be quashed.*

o) *The noticee has denied that he was a part of any related/connected/associated entities who have indulged in any of the violations of the SEBI norms.*

p) *As per the notice, the true facts of the case are that the noticee was the promoter/director of AIL at the relevant time of investigation. The noticee resigned from the post of Director of Kushal Software Limited as on 29.06.2005.*

q) *The noticee has submitted that all his trades were on behalf of himself individually and he has never ever entered into transactions in securities with manipulative intentions. The trades were entered into by him for and on behalf of himself in order to meet his urgent medical expenses and no malafide motives can be attributed to him by execution of the said trades since the transactions entered into by him were strictly on his own behalf and not for any body's behalf.*

r) *Since the scrip was illiquid and he did not hold any trading account with any of the broker and therefore he had to sell the share by way of off market transactions at the rate of Rs. 2/- per share by way of off market transactions at the rate of Rs. 2/- per share in consideration of meeting his urgent medical expenses.*

s) *The investigating officer has completely erred in arriving at a conclusion that he has violated the FUTP Regulations. He has submitted that all his holdings were genuine, bonafide and legitimate and he has unnecessarily being dragged into this episode leading to unnecessary harassment and mental torture to him. The noticee has denied that he has indulged in violation of any Regulations of FUTP.*

t) *The noticee has further submitted that he has not concerned with the others involved in the notice who have acted on their own and for their own good reasons. He has no knowledge or any cause to doubt the genuineness of the trades of others for he has least interested in the same.*

u) *The noticee has sought copies of the documents relied upon by SEBI. He has also sought to cross examine the persons on whose contrary submissions SEBI has relied upon. I reserve my right to further reply.*

v) *The Noticee has denied that on placing reliance on the trade details and details of off market trades it is satisfactorily established that he had violated any of the SEBI Regulations.*

w) *The noticee has denied that he has violated Regulation 4(2) (e) of PFUTP Regulation and also denied that he has manipulated price in the scrip of AIL.*

x) *Moreover, SEBI itself, vide para 6.5.16 of the Investigation report has observed that no specific pattern or synchronized/orders/structured trades or circular trades was observed during the period of investigation.*

y) In view of the above explanations, the noticee has requested that he should be relieved of any alleged contravention of SEBI (FUTP) Regulations, 2003.

z) The noticee has submitted that SEBI should be fair and just and should consider his submissions in a fair and just manner and the charges against him should be dropped forthwith.

12. In the interest of natural justice, two more opportunities of personal hearings were provided to the noticee and he was advised to appear on July 8, 2010 & August 20, 2010. However, the noticee failed to applicant as usual on the said dates.

13. The noticee has been provided with an opportunity of personal hearing on July 8, 2010 and also been advised to submit reply, if any. However, the noticee could neither turn up for hearing nor submitted any reply.

14. Once again, the noticee has been provided another opportunity of personal hearing on August 20, 2010 and also been informed that this is the final opportunity and if any failure to attend the hearing, the matter shall be proceeded ex-parte on the basis of the material available on record.

15. In view of the noticee has not turned up for the aforesaid hearings, it is decided to conduct the adjudication proceedings ex-parte on the basis materials of available records i.e., SCN, reply & investigation report.

CONSIDERATION OF EVIDENCE AND FINDINGS

16. The allegation against the noticee is that he had violated Regulation 4 (2) (e) of PFUTP Regulations. The text of these regulation are as follows:-

Regulations 4(2) (e) of FUTP Regulations

4. Prohibition of manipulative, fraudulent and unfair trade practices

(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:-

(e) any act or omission amounting to manipulation of the price of a security;

17. It was observed from the Investigation report that the noticee was the promoter and director of AXON during the period of investigation. The Promoter holding was 32% (2,11,200 shares) as on March 31, 2006 and entire share holding was owned by the noticee.

18. The allegation is that the noticee sold a huge chunk 2,11,200 shares at a meager price of Rs. 2.00/- a share when the market price was hovering in between Rs. 67.20/- to 70.55/- to the various connected/related entities namely Kushagra Software ltd, Shreeji Herbal Ltd, Handful Investrade P. Ltd, KUSHAL, Sheetal Kadam, VRP Financial Services Pvt. Ltd and Keystone Stock Finance P. Ltd, which they used in manipulation of price of script of AXON.

19. *Brief of Observations made by Bombay Stock Exchange*

a) During the exchange examination period, the price of the scrip decreased from Rs. 73.00 (opening price on March 17, 2006) to Rs.49.45 on July 03, 2006 and thereafter it has increased to touch its period high of Rs.156.10 (September 12, 2006) and closed at Rs.149.00 on September 19, 2006. During the entire exchange examination period the scrip was traded with an average daily traded volume of 7,345 shares. Out of the total trading days of 130 days, the scrip has been traded only on 63 days, out of which on 27 days, singular trades in the scrip was observed.

b) Kushal Software Ltd. which was going to be amalgamated with AXON, along with its various connected entities had dealt in the scrip and had altogether purchased 67,527 shares (14.59% of the total market volume

and 10.23% of the total share capital) and sold 2,15,086 shares (46.84% of the total market volume and 32.59% of the total share capital).

c) On analysis of price variation, for the price fall and price rise patch it is observed that clients connected/related to KUSHAL had contributed Rs. 38.2 out of the total price fall of Rs. 97.55 during the period from February 22, 2006 to July 03, 2006 and Rs. 33.10 to the total price rise of Rs. 96.75 during the period from July 19, 2006 to September 12, 2006. On analyzing the counterparty concentration, no specific trading pattern such as reversal or circular of trades was observed. AXON made various announcements regarding the company's amalgamation with KSL during the exchange examination period.

20. *Brief of Corporate News/Announcements regarding amalgamation of KUSHAL with AXON*

a) On September 01, 2006, AXON informed BSE that a meeting of the Board of Directors AXON would be held on September 07, 2006, inter alia, to consider the feasibility of amalgamation of KUSHAL with AXON.

b) On September 08, 2006, AXON informed BSE that the Board of Directors of AXON at its meeting held on September 07, 2006, approved the feasibility of amalgamation of KUSHAL with AXON.

c) On September 11, 2006, AXON informed BSE that a meeting of the Board of Directors of AXON would be held on September 18, 2006, to approve proposal of Amalgamation of KUSHAL with AXON.

d) On September 20, 2006, AXON informed BSE that the Board of Directors of AXON at its meeting held on September 18, 2006 approved the Amalgamation of KUSHAL with AXON subject to necessary approvals / permissions. The Board also approved the CA recommendation of swap ratio of equity that is: 140 equity shares of the Company of Rs 10 each fully paid for every 100 equity shares of KSL of Rs.10 each fully paid.

21. *Details Pertaining to the Amalgamation of KUSHAL with AXON*

a) It was observed that KUSHAL (transferor company) is being amalgamated into AXON (transferee company). The proposed appointment date for the same was fixed as April 01, 2006 or such date as the High Court at Bombay might direct. The proposed swap ratio worked out was 140 equity shares of AXON of Rs.10 each fully paid up for every 100 equity shares of KUSHAL of Rs.10/- each fully paid up on the basis of. The resolution for the same was passed by the board of directors of AXON on September 18, 2006.

b) From the valuation report submitted by AXON for amalgamation, it was stated that for arriving at the fair value of exchange in the amalgamation of KUSHAL with AXON, Underlying Asset approach (valued at historical cost) and Profit Earning Capacity Value Approach have been used and the Market Value Approach has not been considered. Further, as submitted to BSE, a weightage of 3 was assigned to the value arrived by Underlying Asset approach and a weightage of 0.5 was assigned to the value arrived by Profit Earning Capacity Value Approach, which indicates the fair value arrived at was close to underlying asset value based on historical cost.

c) The proposal for amalgamation was finally rejected by internal committee of BSE on June 28, 2007 on the following grounds.

i. AXON has not been able to provide convincing arguments in support of the method of valuation adopted and for ignoring market capitalization method in the valuation of AXON, due to which share capital of AXON would increase from Rs.66 lakhs to Rs.1605 lakhs which is about 23 times the existing capital of AXON

ii. KUSHAL would not have been able to meet the following norms of the direct listing criteria of the exchange, if it were to seek listing on the exchange as a standalone entity

a) Profit making track record for last 3 years

b) Minimum market capitalization

c) Dividend paying track record for last 3 years

22. *Share Holding Pattern of AXON and KUSHAL*

a) The Promoters holding was 32% (2,11,200 shares) as on March 31, 2006 and all the shares were owned by Mr. Dhiren Shukla (promoter). Public share holding of 68% was dominated by Mr. Vijay Singh Mundhra, Ms. Sarita Mundhra, Mr. Kamal Singh Mundhra, Mr. Ajay Modi, KUSHAL, Mr. Ranju Mumdhra, Sushil Finance Consultants Ltd. and Mr. Tanvir Ali Khan. AIL was a closely held scrip with 86.89% of total share capiltal held by only 24 shareholders each holding more than 1%.It was observed that Mr. Dhiren Shukla sold off his entire stake in AXON i.e., 2,11,200 shares on April 04, 2006.

b) Post sale of promoters holding, as on June 30, 2006, 34% of the equity was held by body corporate and 66% was held by individuals. It was observed that as on June 30, 2006, various body corporates, related/ connected/ associated to/ with KUSHAL viz., Shreeji Herbal Ltd. (4.55%), Handful Investrade P. Ltd. (4.55%) and Kushagra Software Ltd. (4.51%) were holding significant stake in the company. KUSHAL was directly holding 3.22% of the share capital of AIL. The total number of share holders was 111 as on 30.03.2006.

c) The holdings of bodies corporate decreased to 8.4% in the quarter ended September 2006 and the total number of share holders increased to 137.

d) Shareholding pattern of KUSHAL, as on June 30, 2006, 24.38% of the equity was held by Tanu Healthcare Ltd, the single largest shareholder.

Other prominent share holders were VRP Financial Services Ltd (7.74%), Absolute Leasing & Finvest Pvt Ltd (4.62%), Samjhauta Mercantile Pvt Ltd (4.27%), Prahlad Rai Inani (4.18%), M/s Maximaa Systems Ltd (4.17%), Surface Finance Pvt Ltd (3.62%), Catstar Finance Pvt Ltd (3.29%), Pradeep Dhanuka (3.11%), Daisy Impex Pvt Ltd (3.07%) and Kushagra Software Ltd (3.03%).

23. *Price Volume Data of AXON*

a) The PV data of the scrip AXON during the investigation period was as follows

Prices	**February 22, 2006 to July 12, 2006**	**July 13, 2006 to September 19, 2006**
Open	147	55
Close	50	149
High	147	156.1
Low	48.1	48.2

b) The price of the scrip fell consistently from Rs.147 on February 22, to Rs.73 by March 17, 2006 and to a low of Rs.48.10 (price fall of 67.3%) by July 12, 2006. From July 03, 2006 to July 19, 2006, the price was fluctuating between 49.45 and 59.35. Thereafter, the price rose almost steadily to Rs.156.10 (price rise of 224.5%) by September 19, 2006.

c) Sensex rose almost steadily from 10,224.32 to 12,612.38 during the period February 22, 2006 to May 10, 2006. Subsequently, sensex fell down to the levels of 8,929.44 by June 14, 2006 and recovered to 10,930.09 by July 12, 2006 (rise of 6.9%). Further, sensex touched a

high at 12,114.95 on September 18, 2006 and closed at 11,970.47 on September 19, 2006 (rise of 9.5%).

d) The IT Index of BSE was fluctuating and increased from 3,676.48 to 3,844.63 during the period from February 22, 2006 to March 17, 2006. IT Index touched a high of 4,343.63 on April 19, 2006 and fell almost steadily to hit a low of 3,017.25 on June 14, 2006 and closed at 4036.16 on July 12, 2006 (rise of 9.8%). Thereafter, the index almost steadily rose to 4,352.81 by September19, 2006 (rise of 7.8%)

e) As on March 19, 2009, the scrip of AXON closed at Rs. 7.98 with a total market volume of 693 shares.

24. *Off Market Transactions/Transfers*

a) It was observed that numerous off market transactions/transfers took place during the period under investigation. Further, it was observed that various related/connected/associated entities had indulged in off market transactions/transfers among themselves. Details of major off market transactions/transfers that happened among the related/ connected/associated clients are given as below:

Dhiren R Shukla							
Date	***Received From***	***Quantity***	***Buy Price per Share (Rs.)***	***Date***	***Transferred To***	***Quantity***	***Sell Price per Share (Rs.)***
07.01.2006	VRP Financial Services Ltd	76644	NA	03.04.2006	Kushagra Software ltd	30000	2.00
13.03.2006	VRP Financial Services Ltd	13500	NA	03.04.2006	Shreeji Herbal Ltd.	30000	2.00

14.03.2006	Kushagra Software Ltd	16000	NA	03.04.2006	Handful Investrade P. Ltd	30000	2.00
				03.04.2006	Kushal Software Ltd	30000	2.00
				03.04.2006	Sheetal Kadam	30000	2.00
				04.04.2006	VRP Financial Services Ltd	31200	2.00
				04.04.2006	Keystone Stock Finance P. Ltd	30000	2.00
	Total	**106144**			**Total**	**211200**	
Vikas Kashiram Kadam							
Date	***Received From***	***Quantity***	***Buy Price per Share (Rs.)***	***Date***	***Transferred To***	***Quantity***	***Sell Price per Share (Rs.)***
				05.01.2006	VRP Financial Services Ltd	11000	NA
				05.01.2006	Raghuram Shetty	5000	NA
				05.01.2006	Narottambhai Rathod	5000	NA
				05.01.2006	Niranjan Rathod	5000	NA
					Total	**26000**	
Sheetal Kadam							
Date	***Received From***	***Quantity***	***Buy Price per Share (Rs.)***	***Date***	***Transferred To***	***Quantity***	***Sell Price per Share (Rs.)***
03.04.2006	Dhirendra Shukla	30000	2.50				
16.09.2006	Kushal Software Ltd	5258	NA				
	Total	**35258**					
Kushagra Software Ltd							

Date	*Received From*	*Quantity*	*Buy Price per Share (Rs.)*	*Date*	*Transferred To*	*Quantity*	*Sell Price per Share (Rs.)*
03.04.2006	Dhirendra Shukla	30000	NA	22.02.2006	Smita Mahesh Jawajiwar	2000	2.50
				14.03.2006	Dhirendra Shukla	16000	2.50
	Total	**30000**			**Total**	**18000**	
Kushal Software Ltd							
Date	*Received From*	*Quantity*	*Buy Price per Share (Rs.)*	*Date*	*Transferred To*	*Quantity*	*Sell Price per Share (Rs.)*
03.04.2006	Dhirendra Shukla	30000	NA	16.09.2006	Sheetal Kadam	5258	NA
31.07.2006	VRP Financial Services Ltd	10000	NA				
	Total	**40000**			**Total**	**5258**	
Shreeji Herbal Ltd.							
Date	*Received From*	*Quantity*	*Buy Price per Share (Rs.)*	*Date*	*Transferred To*	*Quantity*	*Sell Price per Share (Rs.)*
03.04.2006	Dhirendra Shukla	30000	2.50	20.07.2006	Handful Investrade P. Ltd	5460	55
	Total	**30000**			**Total**	**5460**	
Handful Investrade P Ltd.							
Date	*Received From*	*Quantity*	*Buy Price per Share (Rs.)*	*Date*	*Transferred To*	*Quantity*	*Sell Price per Share (Rs.)*

03.04.2006	Dhirendra Shukla	30000	2.50				
20.07.2006	Shreeji Herbal Ltd.	5460	55				
	Total	**35460**					
VRP Financial Services Ltd							
Date	***Received From***	***Quantity***	***Buy Price per Share (Rs.)***	***Date***	***Transferred To***	***Quantity***	***Sell Price per Share (Rs.)***
08.03.2006	Vidhata Securities ltd	13500	NA	07.01.2006	Dhirendra Shukla	76644	NA
04.04.2006	Dhirendra Shukla	31200	NA	13.03.2006	Dhirendra Shukla	13500	NA
29.07.2006	Keystone Stock Finance P. Ltd	30000	NA	31.07.2006	Kushal Software Ltd	10000	NA
	Total	**74700**			**Total**	**100144**	
Keystone Stock Finance P. Ltd							
Date	***Received From***	***Quantity***	***Buy Price per Share (Rs.)***	***Date***	***Transferred To***	***Quantity***	***Sell Price per Share (Rs.)***
04.04.2006	Dhirendra Shukla	30000	NA	29.07.2006	VRP Financial Services Pvt. Ltd	30000	NA
	Total	**30000**			**Total**	**30000**	

b) Details of all client to client off market transactions are provided as below:

Date	**Shares from**	**Shares to**	**Quantity**	**Rate(Rs. Per share)**

5-Jan-06	Vikas Kashiram Kadam	VRP Financial Services Ltd	11000	
5-Jan-06	Vikas Kashiram Kadam	Raghuram Shetty	5000	
5-Jan-06	Vikas Kashiram Kadam	Narottambhai Rathod	5000	
5-Jan-06	Vikas Kashiram Kadam	Niranjan Rathod	5000	
7-Jan-06	VRP Financial Services	Dhirendra Shukla	76644	
27-Jan-06	Shankar Agarwal	Mukul Agarwal	11000	
30-Jan-06	Shankar Agarwal	Mukul Agarwal	3000	
31-Jan-06	Shankar Agarwal	Mukul Agarwal	3000	
31-Jan-06	Niranjan Rathod	Raghuram Shetty	5000	
31-Jan-06	Narottambhai Rathod	Raghuram Shetty	5000	
31-Jan-06	Kushagra Software Ltd	Sunanda Bhatevara	3400	2.50
31-Jan-06	Kushagra Software Ltd	Vijay Bhatevara	7200	2.50
31-Jan-06	Kushagra Software Ltd	Kajal Bhatevara	5700	2.50
31-Jan-06	Kushagra Software Ltd	Amit Bhatevara	3500	2.50
31-Jan-06	Kushagra Software Ltd	Sujit Vijay Bhatevara	5000	2.50
31-Jan-06	Kushal Software Ltd	Amit Bhatevara	4300	
31-Jan-06	Shreeji Herbal	Amit Bhatevara	3000	
7-Feb-06	Kushagra Software Ltd	Mahesh Suryakant Jawajiwar HUF	2000	2.50
22-Feb-06	Kushagra Software Ltd	Smita Mahesh Jawajiwar	2000	2.50
8-Mar-06	Vidhata Securities Ltd	VRP Financial Services Ltd	13500	
13-Mar-06	VRP Financial Services	Dhirendra Shukla	13500	
14-Mar-06	Kushagra Software ltd	Dhirendra Shukla	16000	2.50
31-Mar-06	Ajay modi	Rambhaba Holding and Trading Pvt Ltd (Ajay Modi)	1550	
3-Apr-06	Dhirendra Shukla	Kushagra Software ltd	30000	2.5
3-Apr-06	Dhirendra Shukla	Shreeji Herbals Ltd.	30000	
3-Apr-06	Dhirendra Shukla	Handful Investrade P. Ltd	30000	
3-Apr-06	Dhirendra Shukla	Kushal Software Ltd	30000	
3-Apr-06	Dhirendra Shukla	Sheetal Kadam	30000	
3-Apr-06	Ajay modi	Rambhaba Holding and Trading Pvt Ltd (Ajay Modi)	19350	
4-Apr-06	Dhirendra Shukla	VRP Financial Services Ltd	31200	
4-Apr-06	Dhirendra Shukla	Keystone Stock Finance P. Ltd	30000	
20-Jul-06	Shreeji Herbal	Handful Investrade P. Ltd	5460	

29-Jul-06	Keystone Stock Finance P. Ltd	VRP Financial Services Ltd	30000	
31-Jul-06	VRP Financial Services	Kushal Software Ltd	10000	
1-Aug-06	Raj Kumari Jain	Shruti Dhrub kedia	1500	
22-Aug-06	Raj Kumari Jain	Ajay Modi	500	
16-Sep-06	Kushal Software Ltd	Sheetal Kadam	5258	
29-Sep-06	VRP Financial Services	Hitesh Bhagat	20000	
3-Oct-06	Kushagra Software ltd	Hitesh Bhagat	10000	2.50
18-Oct-06	Sheetal Kadam	Hitesh Bhagat	20000	
1-Dec-06	Sheetal Kadam	Leelavathi Rathi	3700	
1-Dec-06	Sheetal Kadam	Radhesham Rathi	3700	
12-Dec-06	Kushal Software Ltd	Keystone Stock Finance P. Ltd	24876	

c) It was mentioned in the letter dated February 5,2009 of Mr. Dhiren Shukla that he sold 2,11,200 shares off market at Rs.2.00 per share when the market price was Rs.67.20 and received cash for his medical expenses. He could have got the same amount by selling about 6300 shares on market at Rs.67.20 as comparable volumes were being traded in the market. It was also mentioned that one Mr. Stephen Paul brokered the deal. KUSHAL, Kushagra Software Ltd., Shreeji Herbal Ltd., Handful Investrade Pvt. Ltd in their replies stated that the shares were bought at Rs.2.50 per share by paying in cash however no proofs of consideration paid/received were submitted by any of the concerned entities except KSL.

d) It could be observed from the Table above, that off market transfers took place among Dhiren Shukla, Vikas Kadam, Sheetal Kadam, KUSHAL, Kushagra Software Ltd., Shreeji Herbal Ltd., and Handful Investrade Pvt Ltd., VRP Financial Services Pvt Ltd and Keystone Stock Finance P. Ltd.

e) It was found that the telephone number 022-26354911 of AXON is registered under the name, Handful Investrade Pvt Ltd. for the same address as that of AXON. The telephone number of KUSHAL, 022-

26740651 was registered under the name Mr. Giriraj Kishore Agarwal, for the same address as that of KUSHAL.

f) It is clear from the trade log that Mr. G K Agarwal, G K Agarwal HUF, companies related to him namely, Kushagra Software Ltd., Shreeji Herbal Ltd., Handful Investrade Pvt. Ltd., and KUSHAL altogether bought 62,477 shares and sold 1,52,301 shares. Anagram Securities Ltd. submitted that the person placing orders on behalf of KUSHAL was Mr. G K Agarwal. It was also observed from the KYC of KUSHAL filed with the stock broker that Mr.G.K.Agarwal was a signatory in the KYC. However, KUSHAL informed that Mr. Ravindra Bhaskar Deshmukh was placing orders on behalf of KUSHAL.

g) The companies which had common promoters as AXON or KUSHAL namely, VRP Financial Sevices Ltd., Handful Investrade Pvt. Ltd., Kushagra Software Ltd. and Shreeji Herbal Ltd. were also asked for the same details. The companies provided some of the details asked for.

h) From the replies, it was found that Mr. Dhiren Shukla acted as an interim compliance officer for AIL. Mr. G K Agarwal, the promoter of Kushagra Software Ltd, Shreeji Herbal Ltd, Handful Investrade, acted as Authorized Investment Advisor for KUSHAL. From the Balance Sheet KUSHAL for the year 2006-07, it was observed that unquoted investments were made by the company in Shreeji Herbal P. Ltd and Handful Investrade P. Ltd., which were promoted by Mr.Giriraj Kishore Agarwal. Investments were also made in Tanu Healthcare Ltd., who's MD was Mr. Giriraj Agarwal.

i) AXON and KUSHAL were clearly related as Mr. Dhirendra Shukla, promoter and director of AXON acted as a director of KUSHAL as observed form the annual reports of KUSHAL for the financial years 2004-05 and 2005-06. KUSHAL through the email dated February 18, 2009 also

submitted the same. Another common director was Mr. Ravindra Bhaskar Deshmukh as observed from the submissions made by AXON and KUSHAL and the annual report of KUSHAL for the financial years 2004-05, 2005-06 and 2006-07.

j) From the details as given above and information/documents available at our end it was observed that Mr. Dhirendra R Shukla, Mr. Ravindra Bhaskar Deshmukh, Mr. Giriraj Kishor Agarwal, Mr.Pradeep Dhanuka, M/s 5X Investment, Kushagra Software Ltd, Shreeji Herbal Ltd., Handful Investrade P Ltd., Giriraj Kishor Agarwal HUF, VRP Financial Services Pvt. Ltd., Keystone Stock Finance P. Ltd., Vidhata Securities Pvt Ltd., Mr. Vikas Kashiram Kadam, Ms. Sheetal Kashiram Kadam, Mr. Shasvat Garg are related/connected/associated entities to AXON and/or KUSHAL**.**

25. *Trade Log, Order Log Analysis*

a) It was observed that during the period under investigation, the buy order quantity exceeded sell order quantity. Although the price of the scrip decreased during the period February 22, 2006 to July 12, 2006, buy orders for 6,94,712 shares were placed exceeding the sell orders for 5,28,770 shares. For the period from July 13, 2006 to September 19, 2006, when the price increased, the buy orders for 3,87,966 shares far exceeded the sell orders for 1,20,847 shares, thereby creating a considerable buying pressure.

b) Concentration of the members Pilot Credit Capital Ltd., Anagram Stock Broking Ltd, Anugrah Stock & Broking, Advani Share Broker P. Ltd. (Now Centrum Broking Ltd), Systematix Shares and Stocks (India) Ltd. was observed in placing buy orders.

c) Concentration of the members M/s Anand Rathi Securities P. Ltd. Pilot Credit Capital Ltd., Anagram Stock Broking Ltd, Advani Share Broker P. Ltd. (Now Centrum Broking Ltd), was observed in placing sell orders.

d) Trades were executed for 5,79,082 shares during the entire period of investigation, of which 3,43,010 shares were traded during March 17, 2006 to July 12, 2006 and 119697 shares were traded during July 13, 2006 to September 19, 2006. It would be pertinent to mention that the scrip was moved to trade to trade segment w.e.f July 28, 2006.

e) The member concentration analysis was done for all the gross purchases, net purchases, gross sales and net sales for trades above 2% of total trades executed for the two patches i.e., March 17, 2006 to July 12, 2006 and July 13, 2006 to September 19, 2006. The period from February 22, 2006 to March 16, 2006 was not considered for member concentration analysis as the members and clients who appeared during this period differed quite significantly from the rest of the investigation period. For the period March 17, 2006 to July 12, 2006, top 5 brokers accounted for 58.89% on gross purchase basis, 65.25% on net purchase basis, 58.81% on gross sale basis and 64.86% on net sale basis. For the period July 13, 2006 to September 19, 2006, top 5 brokers accounted for 75.44% on gross purchase basis, 84.04% on net purchase basis, 79.94% on gross sale basis and 79.37% on net sale basis

f) For the period from March 17, 2006 to July 12, 2006 buy orders for 5,62,754 shares exceeded the actual number of 3,43,010 shares bought. Similarly, for the period from July 13, 2006 to September 19, 2006 buy orders for 3,87,966 shares far exceeded the actual number of 1,19,697 shares bought.

g) It was observed that during the period July 13, 2006 to September 19, 2006, the said group of entities had altogether placed buy orders for 70,207 shares and sell orders for 79,585 shares. During the said period, they bought 32,220 shares and sold 79,535 shares.

h) However, the significant amount of sale took place during July 13, 2006 to July 28, 2006, when they sold 79,310 shares, the price range being Rs.54.00 to Rs.63.70. No buy transaction by the group entities took place during the said period although, valid buy orders for 16,250 shares were placed.

i) Subsequently, during the period from July 29, 2006 to September 19, 2006, the group had placed buy orders for 56,957 shares (Bought 32,220 shares) and sell orders for 225 shares (Sold 225 shares), the total market volume being 38,585 shares. During this period, the share price increased from Rs.66.75 to Rs.149. There were singular trades on 17 days during the said period and the group entities appeared on 7 instances on buy side and on 8 instances on sell side. There were 61 trades executed in total during the said period and on 32 instances the group entities appeared on buy side and on 14 instances on sell side. Thus, it was observed that the said group of entities had created a buying pressure in the scrip during this period which had contributed to the price rise.

26. *The analysis of the impact of the first trades and the price difference with respect to the last traded price (LTP) is as follows:*

a) The LTP analysis of all the trades including first trades for the investigation period is given in the following table

Member Code	**Client Code**	**Client name**	**Net Price fall contribution**	**Net Price fall contribution by being on**	**Net Price rise contributi**	**Net Price rise contribution by being on**

			in the period from February 22, 2006 to July 12, 2006	**sell side in the period from February 22, 2006 to July 12, 2006**	**on in the period from July 13, 2006 to September 19, 2006**	**buy side in the period from July 13, 2006 to September 19, 2006**
909	8224	Kushal Software Ltd	-7.35	0	0	0
27	13803001	Kushal Software Ltd	-10.45	-8.10	62.90	18.50
30	GMDK073	Kushal Software Ltd	-9.05	-9.05	0	0
		SUB TOTAL	**-26.85**	**-17.05**	**62.90**	**18.50**
909	8225	Kushagra Software Ltd	-25.85	-3.85	0.35	0.35
30	GMDK069	Kushagra Software Ltd	-4.75	-7.25	0	0
		SUB TOTAL	**-30.60**	**-11.10**	**0.35**	**0.35**
909	7242	Handful Investrade P. Ltd	0	0	-1.50	-1.50
27	13803006	Handful Investrade P. Ltd	1.50	1.50	4.90	0
		SUB TOTAL	**1.50**	**1.50**	**3.40**	**-1.50**
909	6905	Giriraj Agarwal	-7.75	-4.45	0	0
909	6903	Giriraj Agarwal HUF	-39.5	-36.00	0	0
909	11106	Shreeji Herbal	-1.85	-1.85	0	0
446	AGR067	Sheetal Kadam	-2.25	1.25	-6.1	-1.6
328	MMV023	VRP Financial Services P. Ltd	0	0	-6.6	0

b) The above entities who were all related contributed to a price fall of Rs.107.30 (cumulative price fall with respect to the previous traded price) during the period from February 22, 2006 to July 12, 2006 and a price rise of Rs.53.95 (cumulative price rise with respect to the previous traded price) for the period from July 13, 2006 to September 19, 2006 by being on either sell side or buy side of the transactions that resulted in the new prices. It may be observed that by creating selling pressure the group could lower the price of the scrip by

Rs.67.70 (cumulative price fall with respect to the previous traded price) during the period from February 22, 2006 to July 12, 2006 and contributed to a price rise of Rs.15.75 (cumulative price rise with respect to the previous traded price) by creating buying pressure.

c) The group by trading amongst themselves contributed to a price fall of Rs.22.55 (cumulative price fall with respect to the previous traded price) during the period from February 22, 2006 to July 12, 2006 and a price rise of Rs.13.00 (cumulative price rise with respect to the previous traded price) for the period from July 13, 2006 to September 19, 2006.

d) *Analysis Of First Trades*

Particulars	**February 22, 2006 to March 16, 2006**	**March 17, 2006 to July 12, 2006**	**July 13, 2006 to September 19, 2006**
Total number of trading days	15	30	33
First trades entered into by KSL and related entities	7	18	25

e) As seen from the above table KSL and related entities entered into first trades on 18 trading days out of 30 for the period March 17, 2006 to July 12, 2006. However, no consistent pattern of trading by the related entities was observed during this period.

f) For the period July 13, 2006 to September 19, 2006 KSL and related entities entered into first trades on 25 days out of 33 trading days. On 13 instances the group entities appeared on buy side, on 15 instances on sell side and out of the same on 3 instances on both buy and sale sides. Overall during the said period the group entities traded on 27 days out of 33 trading days. On the 3 instances mentioned, Ms.

Sheetal Kadam acted as counter party to KSL and the details of those trades are given below.

Trade Date	Trade Time	Buy Member Code	Buy Client	Sell Member Code	Sell Client	Quantity	Price
22-Aug-06	10:41:43	27	Kushal Software Ltd	767	01R008	50	96
25-Aug-06	14:30:01	446	Sheetal Kadam	27	Kushal Software Ltd	50	100.5
29-Aug-06	14:12:44	27	Kushal Software Ltd	446	Sheetal Kadam	50	105
30-Aug-06	13:54:50	27	Kushal Software Ltd	446	Sheetal Kadam	25	109

g) From July 31, 2006 to September 19, 2006 out of 27 trading days on 18 days there were singular trades.

h) The scrip lacked depth from July 28, 2006 to September11, 2006, till the time company announced the approval of amalgamation to BSE. Only, 36 trades occurred during that period for 11520 shares and the price increased from Rs.66.75 to Rs.149.25. Except for 4 trades for a cumulative volume of 10,790 shares the average trade volume was 23 shares per trade and 36 shares per day. Also, the scrip was traded only on 4 days for the month of April and on 3 days during May.

i) From, the above it is clear that the scrip was very illiquid with little demand in market. However, KSL placed buy orders for 25,797 shares with buy order price varying from Rs.73.55 to Rs.135. Also, sell orders were placed by KSL for a mere 200 shares in total with sell order price ranging from Rs.70.2 to Rs.149. The average volume was 12 shares per sell order. Also, on many instances first trades happened in the latter half of the day due to lack of buy as well as sell orders indicating

dearth of sellers and buyers. From the shareholding pattern it could be observed that as on June 30, 2006, the total number of share holders was 111 and it increased to 137 as on September 30, 2006 indicating that it was closely held scrip and lacked depth. From these facts it could be inferred that the intention was to establish a new higher price even though there was very little demand otherwise.

j) The said group of entities created a buying pressure in the scrip during the period of price rise and also orders placed, trades executed by them influenced the price of the scrip significantly. Moreover, Mr. Dhiren Shukla provided shares to the said group entities through off market transactions/transfers at a very low rate (as submitted by him) enabling them to manipulate in the scrip. Though VRP Financial Services Pvt. Ltd., Keystone Stock Finace P. Ltd., Kushagra Software Ltd., Handful Investrade Pvt. Ltd., Shrreji Herbal Ltd. and Mr. Giriraj Kishor Agarwal were part of the group no involvement on their part in jacking up the price of the scrip per se was observed.

k) The possible reason for such manipulation of price of the scrip of AXON might be to have a better valuation for the shareholders of KUSHAL. The same is elaborated through an example give below. As it could be seen KUSHAL and its related/connected/associated group entities would have been benefited greatly if the market price of AIL was high. Taking the swap ratio of 140 shares of AXON for 100 shares of KUSHAL and assuming that the price of each share of AXON is Rs.100, each share of KUSHAL would fetch a price of Rs.140 in the market. If the market price of AIL went up to Rs.200, each share of KUSHAL for the same asset value, would fetch a price of Rs.280 in the market. This incremental gain in the value of shares of KUSHAL without any additional increase in asset value would have been

possible, had the amalgamation was successful, thus benefiting the shareholders of KUSHAL. However, their motive was defeated with the rejection of the proposal for amalgamation by internal committee of BSE on June 28, 2007.

l) From the above, it can be inferred that the aforesaid connected/related entities have clearly influenced the price of the scrip ultimately distorted market equilibrium of the scrip. The notice has provided shares to the said group entities through off market transactions/transfers at a very low rate (as submitted by him) enabling them to manipulate in the scrip.

m) The Noticee's vide letter dated January 5, 2009 that he had sold 2,11,200 shares in off market at Rs.2.00 per share less than market price Rs.67.20 and stated reason that cash is needed for his medical expenses.

n) However, the justification given by him is not acceptable as he could have got the same amount by selling about 6300 shares on market at Rs.67.20 as comparable volumes were being traded in the market.

o) It was also mentioned that one Mr. Stephen Paul brokered the deal. KSL, Kushagra Software Ltd., Shreeji Herbal Ltd., Handful Investrade Pvt. Ltd in their replies stated that the shares were bought at Rs.2.50 per share by paying in cash however no proofs of consideration paid/received were submitted by any of the concerned entities except Kushal.

p) It was observed that the noticee while doing the aforesaid deal of 2,11, 200 shares at price of Rs. 2.00 /- a share when the market price was Rs. 67.20 /- has involved in the act of manipulation of the price of

AIL which is a violation of provisions of Regulation 4(2)(e) of PFUTP Regulations.

27. In view of above all, it was observed that Mr. Dhiren Shukla had violated the provisions under *Regulation 4(2)(e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003*

28. *The Hon'ble SAT, in Ketan Parekh Vs. Securities and Exchange Board of India (Appeal No. 2 of 2004), observed as follows:*

"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."

29. *In the case of Ashok K Chaudhary v SEBI, (Appeal No 69 of 2008), dated November 5, 2008, the Hon'ble SAT observed that :*

"such large number of reverse trades cannot take place through the mechanism of the system. These have obviously been manipulated. Moreover,

reverse trades are fictitious trades meant to increase volumes on the screen of the trading system as there is no change of beneficial ownership in the traded shares".

30. *In view of the above findings it can be concluded that the noticee has violated Regulation 4(2) (e) of PFUTP Regulations. The said violations attract penalty under section 15HA of the SEBI Act which provides that:*

> *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.*

31. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Rules require that while adjudging the quantum of penalty, 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

32. It is also to be noted that the Investigation report has not quantified the profit / loss for the nature of violations /transactions carried out by the noticee and no quantifiable figures are available on record to assess the disproportionate gain or unfair advantage, amount of loss caused to an investor or group of investors as a result of the fraudulent practices and non-genuine transactions.

33. In view of the above, I impose a penalty of Rs. 40 lakhs (forty lakhs only) on the noticee under Section 15 HA of the Securities and Exchange Board of India Act, 1992, which is appropriate in the facts and circumstances of the case.

ORDER

34. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me U/s 15-I of the Act, I hereby impose a penalty of Rs. 40 lakhs (forty lakhs only) on the noticee under Section 15HA of the SEBI Act. I am of view that the said penalty is commensurate with the violations made by the noticee.

35. The above penalty amount shall be paid through a duly crossed demand draft drawn 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 Deputy General Manager, Investigation Department - ID 6, Securities and Exchange Board of India, SEBI Bhavan, Plot No, C4-A, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai-400 051.

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

Date: 28-09-2012 **SANTOSH KUMAR SHARMA**

MUMBAI **ADJUDICATING OFFICER**