**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. EAD-2/AO/87/2012]**

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**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**

**Against**

**M/s Jitendra Harjivandas Securities Pvt. Ltd.**

**[PAN: AAACJ2849K]**

**In the matter of**

**M/s Betala Global Securities Ltd.**

**Background:**

1. The Hon'ble Securities Appellate Tribunal (SAT) decided on Appeal No. 138 of 2010, vide order dated January 10, 2011 by setting aside the adjudication order no. PKB/AO-71/2010 dated June 03, 2010 and remanding the case back to the Adjudicating Officer to proceed afresh in accordance with law on the ground that the findings recorded by the adjudicating officer were based on the erroneous data furnished to M/s Jitendra Harjivandas Securities Pvt. Ltd. (hereinafter referred to as the 'Noticee') in the matter of M/s Betala Global Securities Ltd. (hereinafter referred to as 'BGSL')

**Notice, Reply & Personal Hearing:**

2. Accordingly the Adjudicating Officer issued a notice dated June 25, 2012 (hereinafter referred to as the 'SCN') to the Noticee in terms of Rule 4 of

the Adjudication Rules requiring to show cause as to why an inquiry should not be held against him for the alleged violations.

3. It is stated in the SCN that during the period May 02, 2003 to November 21, 2003 the price of the scrip of BGSL rose from Rs. 34.05 to Rs. 120 (i.e., a rise of around 254%) and a total of 1,54,18,430 shares were traded. A group of clients connected to each other i.e., Mahesh Mistry, Dharmendra S. Thapa, Pravin Kumar Jain, Suman Saini, Jalaj I Batra, Nicholas N. Gomes, Piyush Shah, Dimple Shah, Harish Kapadia, Vinod Khetan, M/s Shri Sai Shraddha Leasing & Hire Purchase Finance Private Limited, M/s Arihant Securities and M/s Shiner Trading Co. Pvt. Ltd**.,** Rupa V Shah, Narendra Ganatra, Anita Khetan, Vijay Amrutlal Rathod (hereinafter referred to as 'Mahesh Mistry Group'**)** traded in the shares of the BGSL through various trading members and mostly through the Noticee and Action Financial Services (India) Ltd.

4. SCN alleged that the Noticee aided and abetted the entities belonging to the Mahesh Mistry Group in employing manipulative and deceptive devices of trading such as circular and synchronized trades by providing a platform for such trades which led to manipulation of price and creation of artificial demand and also a false appearance of trading in the scrip for the scrip of BGSL. The Noticee therefore, allegedly violated the provisions of regulations 4(2)(a) and (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Act) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations, 2003') and clause A (1),(2),(3) and (4) of the Code of Conduct for Stock Brokers as laid down in Schedule II under Regulation 7 of SEBI Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as 'Broker Regulations, 1992').

5. The SCN was delivered to the Noticee. The Noticee vide letter dated July 10, 2012 requested for extension of time for replying to SCN. However, the Noticee did not reply to the SCN. In the interest of natural justice and

in order to conduct an inquiry as per Rule 4 (3) of the Adjudication Rules, I granted an opportunity of personal hearing to the Noticee vide notice dated August 29, 2012 on September 11, 2012., Mr. Pranav Sanghvi, Director of the Noticee attended the hearing and made oral and written submissions vide letter dated September 10, 2012. The Noticee submitted that it was not aware of any synchronized trading between its clients and the counterparty. Payments received by the Noticee were in good faith and not with any other intentions. Noticee was not involved in manipulation of the price and creation of artificial demands for the scrip of the BGSL.

6. In view of the above, I am proceeding with the inquiry taking into account the documents and material as available on record.

**Consideration of Issues, Evidence and Findings**

7. I have carefully perused the charges against the Noticee mentioned in the SCN, oral and written submissions and the materials and documents as available on record. The issues that arise for consideration in the present case are:

   a) ***Whether the Noticee has violated the provisions of Regulations* 4(2)(a) and (e) of *the PFUTP Regulations and clause A (1),(2),(3) and (4) of the Code of Conduct for Stock Brokers as laid down in Schedule II under Regulation 7 of Broker Regulations?***
   b) ***Does the violation, if any, on the part of the Noticee attract any penalty under Sections 15HA and 15HB of the SEBI Act?***
   c) ***If yes, what should be the quantum of penalty?***

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

**SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003**

***Regulation 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:—*

*(a) indulging in an act which creates false or misleading appearance of trading in the securities market;*

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

**SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992**

***Regulation 7: Stock-Brokers to abide by Code of Conduct.***
*The stock-broker holding a certificate shall at all times abide by the Code of Conduct as specified at Schedule II.*
***Schedule II: Clause A:***
*(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.*

9. I find from Annexure II to the SCN that Pravin Jain acted as an introducer to the broker for Dharmendra Thapa,Jalaj I Batra, Piyush Shah, Dimple Shah (wife of Piyush Shah), Suman Saini, Harish Kapadia, Nicholas N Gomes, Vinod Khetan. Dharmendra Thapa who is the director of Shiner Trading Co. Dharmedra Thapa and Suman Saini are directors of Sai Shraddha Leasing and Hire Purchase Finance Pvt. Ltd. Pravin Jain signed the KYC of Arihant securities Ltd. Anita Khetan is the wife of Vinod

Khetan. Further, I find that Mahesh Mistry, Suman Saini, Dharmendra S. Thapa, Jalaj I. Batra, Nicholas N. Gomes, M/s Shri Sai Shraddha Leasing & Hire Purchase Finance. Pvt. Ltd., and M/s Arihant Securities Ltd. have common office address i.e. 52, 3rd Floor, Marine Street, Mumbai –400 002.

10. It is alleged in the SCN that one of the entities of Mahesh Mistry Group, Shri Piyush Shah was working as a remiser with the Noticee during the investigation period which the Noticee denied. But with respect to the allegation that the said entity introduced some other entities of Mahesh Mistry Group to the Noticee and traded on their behalf in lieu of some brokerage and commission, the Noticee did not deny or prove otherwise.

11. The price of the scrip of BGSL increased from Rs. 34.05 on May 02, 2003 to Rs. 120 on November 13, 2003 reflecting a price rise of around 254% and thereafter the scrip closed at 109.25 at the end of the investigation period, i.e. on November 21, 2003. The company had meager income and incurred losses in all the quarters of Financial Year 2002-02. During the first two quarters of financial year 2003-04 also the company incurred losses. Besides, no major announcements or news items relating to the company during the investigation period. The abnormal increase in the price of the scrip was not backed by any change in the fundamentals of the company and as such was artificial and designed to create false market.

12. A total 1,54,18,430 shares were traded during the investigation period in the scrip of BGSL. Mahesh Mistry Group bought a total of 1,03,98,371 shares and sold a total of 1,06,81,517 shares. I find from Annexure IV to the SCN that buy side and sell side circular trades of the Mahesh Mistry Group were same i.e. 73,86,363 shares. The Noticee bought and sold a total of 41,77,352 shares and 8,16,195 shares respectively for Mahesh

Mistry Group. Out of the total quantity bought and sold by the Noticee, 24,19,859 shares and 4,26,383 shares respectively were circular trades.

13. I find from the last traded price analysis (hereinafter referred to as 'LTP Analysis') that in total 1,54,18,430 shares of the company were traded at a price different from the last traded price, which constituted 10.04% of the total volumes traded in the scrip during that period. The price range of such trades fluctuated from ₹ (-) 11.20 to ₹ 9.60 and that the total price rise due to such price difference, as coming out in the LTP Analysis, has been calculated to be ₹ 77 for the investigation period. For a time difference below 60 seconds, there have been 36,121 trades resulting in quantity of 81,81,055 shares amounting to 53.06% of the total traded quantity.

14. I find from Annexure VII to the SCN that the Noticee executed several instances of synchronized trades wherein price difference is greater than ₹ 2 and the time difference is less than 60 seconds with counter party broker M/s Action Financial Services Limited both traded on behalf of Mahesh Mistry Group. The trading pattern reveals a proximity in the inputting of orders in such a way 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 clearly indicates synchronization in the logging of orders. The matching of these trades through the Noticee between the entities of the Mahesh Mistry Group was not a solitary incident or two; instead a large number of synchronized trades got matched regularly during the investigation period. It is my considered belief that the frequency of such trades ensured consistent matching of the orders purely for the purpose of projection of the volumes of the shares of the company in a way that was not the market determined volumes, possibly to induced other persons to invest in the scrip of BGSL. This results in artificial appearance of trading at the stock exchange and

also of artificial appearance of discovery of price, misguiding the general investors. Besides such transactions relating to the scrip of the company were carried out without the intention of change of ownership of such security as in most of the trades the counter party clients are the members of Mahesh Mistry Group.

15. I find the Noticee submitted before the Investigating Authority that it got a call from the Surveillance Department of BSE in November 2003, informing about some fictitious and non genuine trades in the scrip of the company after which the Noticee stopped all transactions of those clients of Noticee who were introduced by Shri Piyush Shah. Further, after Noticee's enquiry into the dealings, Noticee found that the main persons who were dealing in the scrip of BGSL or making payments were Shri Piyush Shah, Shri Pravin Kumar Jain and Shri Jalaj Batra on behalf of Shri Mahesh Mistry, Shri Harish Kapadia and Smt. Dimple Shah, all of them being members of the Mahesh Mistry Group.

16. The Noticee did not deny that it had multiple average credit balance ranging from ₹ 50-80 lakhs in the account of Shri Mahesh Mistry for a long period (July to October, 2003) as the said entities belonging to the Mahesh Mistry Group were the bulk purchasers and afterwards all of a sudden the Noticee had a debit balance of ₹ 60,80,440.91 including outstanding brokerage of about ₹ 27 lakhs as on November 18, 2003 in the account. Also, the entities belonging to Mahesh Mistry Group asked the Noticee to purchase shares of the company in different client name and simultaneously the entities belonging to Mahesh Mistry Group sold shares of the company. To recover its dues the Noticee had entered into an arrangement with the entities of Mahesh Mistry Group whereby the entities of Mahesh Mistry Group sold shares of the company in the market from one side and bought from another side. Further, the said arrangement was entered into because of the fact that on account of sales

made by Mahesh Mistry Group, the Noticee received the credit from the exchange and secured the money.

17. It is alleged in the SCN that client Mahesh H. Mistry, got registered on June 23, 3003 and the bank account mentioned by him was 13634 (Bank of India, Stock Exchange Branch). However, transactions from this account number i.e. 13634 were noticed from June 04, 2003 onwards (for the credit of ₹ 3,32,010 on behalf of Dimple P. Shah) in trading member's account number 10301 (BoI, Stock Exchange Branch). Further, on June 16 & 17, 2003 a total of ₹ 13,12,600 was credited in the member's account number 10283 (Bank of India, Stock Exchange Branch) which was transferred from the client's account number i.e. 13634. On inquiry, it was said that there was a collective consortium of group of people who were making payments and deliveries on a common basis on behalf of each other for their liability. It has been observed that the account statement showing the flow of money in the account no. 10283 from Mahesh Mistry account appears to be on account of trades executed by Dimple Shah. I find that the Noticee merely disputed the allegation, without substantiating any corroborative evidences to the contrary.

18. Therefore, taking into account the submissions of the Noticee before the Investigating Authority I find that there was a consortium of people, all belonging to Mahesh Mistry Group, who were making payments and deliveries on a common basis on behalf of each other for their liability to the Noticee, also reinforcing the finding that the Mahesh Mistry Group was acting in concert while trading in the scrip of BGSL during the investigation period.

*19*. Further, I am of the view that it cannot be a mere coincidence that every time, the broker acted in complete ignorance and on behalf of its client, as claimed by the Noticee. The Noticee by participating in the trading in this

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

20. I have also noted the submission of the Noticee that it was not aware of any synchronized trading between its clients and the counterparty. In this connection, Hon'ble SAT in *Ketan Parekh Vs. Securities & Exchange Board of India* (Appeal No. 2 of 2004) held that in order to find out whether a transaction has been executed with the intention to manipulate the market

or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available. In *Nirmal Bang Securities Pvt. Ltd Vs Chairman, SEBI,* Appeal No. 54-57/2002, dated October 31, 2003, the Hon'ble SAT observed that where there are too many transactions over a period of time giving an impression that these were all synchronized, 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.

21. The Hon'ble SAT, in *Triumph International Finance Ltd. Vs Securities and Exchange Board of India* (Appeal No. 35 of 2002), observed as follows: -

"*The question that arises for consideration is – could it be said that the appellant was innocent and whether such large number of trades could have matched on the screen without the knowledge and active involvement of the appellant as a broker. The answer has to be in the negative. It is the broker who plays a pivotal role in synchronizing the trades with the counter broker and matches the same through the exchange mechanism by punching the buy and sell orders simultaneously. It is true that the brokers act on the advice of their clients but it is they who actually implement the game plan. In the trades now in question the buyer, the seller and CSFB as the seller's broker have already been found guilty. It is inconceivable that such large number of trades could have matched on the screen without the appellant as the buyer's broker being a party to the game plan. Since the buy and sell orders were punched into the system simultaneously in such large numbers and they all matched, we cannot believe that it was a coincidence and the only inference that can be drawn is that there was a prior meeting of the minds before the trades were executed and this disturbs the true price discovery mechanism of the exchange. The appellant is only feigning innocence which plea in the circumstances cannot be accepted."*

22. Further, in the present case, the trades 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 brokers, 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.

23. In view of the above, I conclude that the Noticee aided and abetted the entities belonging to the Mahesh Mistry Group in employing manipulative and deceptive devices of trading such as circular and synchronized trades by providing a platform for such trades which led to manipulation of price and creation of artificial demand for the scrip of the company as also a false appearance of trading in the scrip of the company.

24. Further, the Noticee, as a stock broker, have failed to show high standards of integrity, promptitude and fairness as well as failed to act with due skill, care and diligence in the conduct of your business. The Noticee as a stock broker have indulged in manipulative and fraudulent transactions and created a false market of shares of the company by acting in concert with the entities of Mahesh Mistry Group.

25. In view of the aforesaid observations and findings, I conclude that the allegations of violation of the provisions of Regulations 4 (2) (a) & (e) of the PFUTP Regulations, 2003 and clause A (1),(2),(3) and (4) of the Code of Conduct for Stock Brokers as laid down in Schedule II under Regulation 7 of Broker Regulations, 1992 by the Noticee stand established, which makes it liable for penalty under Sections 15HA and 15HB of the SEBI Act.

26. 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"*.

27. As the violation of the statutory obligation Regulations 4 (2) (a) & (e) of the PFUTP Regulations, 2003 and clause A (1),(2),(3) and (4) of the Code of Conduct for Stock Brokers as laid down in Schedule II under Regulation 7 of Broker Regulations, 1992 by the Noticee stand established, I hold that the Noticee is liable for monetary penalty under section 15HA and 15HB of SEBI Act, which reads as under:-

28. The provisions of Section 15HA of the SEBI Act read as follows:

***Penalty for fraudulent and unfair trade practices.***

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

***Penalty for contravention where no separate penalty has been provided***

***15HB:*** *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board*

*thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

29. While imposing monetary penalty it is obligatory to consider the factors stipulated in Section 15J of the 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.*

10. I observe that from the material available on record it is difficult to quantify any gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default of the Noticee or to ascertain whether the defaults are repetitive in nature.

**Order**

11. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a total penalty of ₹10,00,000/- (Rupees Ten Lakhs Only) on the Noticee (i.e. a penalty of ₹ 5,00,000/- (Rupees Five Lakhs Only) under Section 15HA of the SEBI Act and a penalty of ₹ 5,00,000/- (Rupees Five Lakhs Only) under Section 15HB of the SEBI Act. In my view, the penalty is commensurate with the default committed by the Noticee.

12. The penalty amount as mentioned above shall be paid by the Noticee through a duly crossed demand draft drawn in favour of “SEBI – Penalties Remittable to Government of India” and payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to the Division Chief, IVD-ID6, Securities and Exchange Board of India, Plot No. C4-A, ‘G’ Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

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

**Date: November 01, 2012** **P K KURIACHEN**

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