BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. BM/AO- 70/2012]

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

Triveni Management Consultancy Services Limited

(SEBI Reg. No.: INB/F230652831 (NSE), INB010652833 (BSE)

In the matter of Asian Star Company Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted investigation in trading in the scrip of Asian Star Company Limited (formerly hereinafter referred to as **"ASCL"** or **"the company"**) for the period October 10, 2008 to November 20, 2008 (hereinafter referred to as **"investigation period"**). The shares of ASCL are listed at Bombay Stock Exchange (hereinafter referred to as **'BSE'**). It was observed that during the investigation period the price of the scrip went up from ₹ 1,240.00 on October 10, 2008 to ₹ 1,306.15 on November 20, 2008 (18.57% rise in 28 trading days). During the same period the SENSEX had fallen by 19.73% (i.e. from 10,527.85 to 8,451.01). Subsequent to the investigation period the price had started to fall and closed at ₹ 905 on January 30, 2009.

2. The role of the brokers and their clients who traded in the scrip of ASCL on BSE was scrutinized. It was observed during investigation that certain entities who were

allegedly connected to each other had indulged in circular/reversal synchronized trading in such a manner that led to creation of artificial volume in the scrips.

3. From the trading pattern it was observed that there was concentration among the major brokers and their clients on BSE for the period under examination. Analysis of trading pattern revealed that the broker Triveni Management Consultancy Service (hereinafter referred to as the **"Noticee"**) had maximum concentration in gross purchase at 26.25 % followed by broker BP Equities Pvt Ltd (hereinafter referred to as "BP Equities"), Swastika Investment Ltd (hereinafter referred to as "Swastika") and Emkay Global Financial Services Ltd (hereinafter referred to as "Emkay Global") at 19.27 %, 17.97 % and 16.97 % respectively. On gross sales also the same brokers had the same percentage of concentration as all of them had sold entire or similar quantity of the shares bought.

4. It was observed that the group of entities allegedly connected to each other viz., Sandeep Jain, Jitendra Jain, Suresh Hanswal, Pradesh Nimawat, Sunil Mehta, Usha Mehta, Bharat C. Jain, Arun Manohar Sakpal, Narendra Sanghi, Meen Been Elastomers, Dilip Rathore, Bhanwar Lal Paliwal, Alpesh G Dand, Manisha Mardia, Rajnish Jain were found to be executing synchronized / structured and reversal trades among themselves. These entities were found to be linked with each other through Sunil Mehta, Ajay Roongta, Manish Mathur and together formed a group which is henceforth referred as **"Mehta Group".** It was alleged that Noticee was advising clients to trade in the scrip of the company and was placing manipulative orders (synchronized, structured and reversal trades) in the accounts of its clients and thus found to be actively aiding and abetting in the alleged manipulative transactions in connivance with Sunil Mehta. Further, it was alleged that glaring mistakes were found in maintaining KYC forms of the clients. Noticee was thus, alleged to have failed to carry out its business with due, skill, care and due diligence and violated Regulation 4(1), (2) (a), (b), (e) & (o) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003

(hereinafter referred to as **"PFUTP")** and Regulation 7 read with Clauses A(1), A(2), A(3) A(4) & A(5) of Code of Conduct for Stock Brokers as specified in Schedule II of the SEBI (Stock Broker and Sub-broker) Regulation, 1992 (hereinafter referred to as **"Stock Brokers Regulations"**). Consequently, the Noticee is liable for monetary penalty under section 15 HA and 15HB of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**").

APPOINTMENT OF ADJUDICATING OFFICER

5. The undersigned was appointed as Adjudicating Officer vide order dated November 09, 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 Stock Brokers Regulations committed by the Noticee.

SHOW CAUSE NOTICE, HEARING AND REPLY

6. Show Cause Notice No. EAD-6/BM/VS/29351/2010 dated December 9, 2010 (hereinafter referred to as **'SCN'**) was issued to the Noticee under rule 4 of the Rules to show cause as to why an inquiry should not be held and penalty be not imposed under section 15 HA and 15HB of SEBI Act for the alleged violation specified in the said SCN. Vide letter dated December 21, 2010 Noticee sought time till January 31, 2011 for filing reply to the SCN and same was granted vide email dated January 11, 2011.

7. Vide letter dated January 17, 2011 Noticee sought for copies of statements relied upon SEBI/ Investigation Officer on the basis of which SCN has been issued. Vide letter dated January 28, 2011 copy of statement recorded by Noticee before the Investigation Authority (IA) was provided and Noticee was asked to specify the documents required by them. In continuation to their earlier letter Noticee vide

letter dated January 28, 2011 again sought for the documents which it had mentioned in its earlier letter. Vide letter dated February 4, 2011 Noticee acknowledged the receipt of its statement made before IA and mentioned that the answers to the questions were not legible and sought for inspection of the documents. Noticee sought for the statements recorded by Adjudicating Officer of the clients involved in the SCN and any other documents or statement which has been relied upon in the SCN. Vide letter dated February 8, 2011 Noticee was informed that copy of its statement and copies of documents which were relevant and were the basis for the charges framed were provided to them and legible copy of Noticee's statement was provided. Vide letter dated February 18, 2011 Noticee filed the detailed reply to the SCN, denied all the allegations leveled against him in the SCN and inter alia submitted that:

a. *We have always followed policy of trading as per the instructions given by our clients and have never taken investment decision on behalf of our clients. While permitting clients to trade, we decide on the exposure to be granted to each client on the basis of their previous trading history, the net worth of the client and the securities/cash available with us as margin. Some of our clients are day traders/jobbers and in their case since there is rarely any delivery, we closely monitor their trades to decide their exposure.*
b. *That SEBI has cherry picked the trades of only four clients and only those trades of even those four clients that support their theory of synchronized trading and ignored the remaining trades and trades of other clients. This is not a rational, scientific, logical or legally permitted method of drawing adverse findings against us and alleging fraud by us.*
c. *That the trading system of BSE and NSE are anonymous and automated, it is not possible for a broker or client to indentify counter parties while placing orders.*
d. *That SEBI ought to have established that there was some understanding between the parties to the trade to synchronize their orders in a malafide manner and that*

they in fact acted on such an understanding. No such finding is made in the said SCN.

e. *That with regard to the allegation that the reversal took place with the same brokers/clients who were counterparties to the original trades, we repeat, reiterate and submit that the same could only have taken place in the normal course of business and can only be coincidence unless it is established that there was some understanding between the parties to the trades in fact acted on such an understanding. No such finding is made in the SCN.*

f. *That we are not aware of any "Mehta Group" or the constitution thereof.*

g. *None of the persons whose statements SEBI has referred to any such "Mehta Group" or even stated that they acted as a group; copies of statement have not been furnished to us by SEBI.*

h. *Mr. Manish Mathur is our Chief Operations but we are not concerned with his father or friends; it is pertinent to note that Mr. Mathur has not traded in the scrip.*

i. *We have not been provided with copies of the statement of Sunil Mehta and we have not been provided with an opportunity to cross examine him.*

j. *With reference to the statements of Bhanwarlal Paliwal, Suresh Hanswal, Alpesh G Dand, Manisha Mardia, Pradesh, Rajnish Jain and Ajay Roongta, we have not been provided with a copy of their statements and/or an opportunity to cross-examine them; in absence of same, it is illegal for SEBI to rely upon his statement to make adverse findings against us.*

k. *SEBI has referred to a fund flow between Sunil Mehta, Seema Mathur and Gopal Lal Mathur, but the same is not substantiated by any document of proof; in the absence of the same, it is unlawful for SEBI to rely upon the same to draw adverse finding against us.*

l. *That we do not fall into any of the 3 categories of entities who "operated" during the Investigation Period; we did not invest in the scrip in our proprietary account, we did not fund the transactions of others, we did not use the accounts of others to trade and we were not name lenders.*

m. *We repeat and deny that we have synchronized or structured any trades for the said alleged Mehta Group.*

n. *We deny that we are related to Sunil Mehta through Manish Mathur; Sunil Mehta is only one of our clients and not otherwise related to us. Mr. Mathur is our employee and not a promoter or shareholder. Furthermore, Mr. Mathur's friendship with Sunil Mehta cannot be the basis to allege that we were related to Sunil Mehta or that awe had acted with him.*

o. *That Mr. Jitendra sought periodically requested for payout of certain sums of money and we made the same to him; it is not SEBI's case that the margin maintained by us were rendered sufficient on account of such payments. We are not concerned with or aware of what he did with the proceeds thereof. In this regard it is pertinent to note that we have not been provided with copies of his bank statement which shows the utilization of funds and therefore, it is unlawful for SEBI to rely upon the same to make adverse findings against us.*

p. *We deny that we used Jitendra's account as a conduit for transfer of funds to Sunil Mehta.*

q. *That SEBI has not set out the names and specific details of the KYCs in respect of which there has been alleged shortcomings and details of the said alleged shortcomings; we are therefore, unable to respond the same.*

r. *That we have permitted out clients to trade in the said scrip only on the basis of adequate margins.*

8. Vide letter dated February 24, 2011 Noticee was informed that all the documents which were relevant and were the basis for the charges framed, were provided to the Noticee with the SCN. Thereafter vide letter dated March 10, 2011 Noticee reiterated the submission made in along with the earlier submissions dated February 18, 2011 and made the further submissions:

a. *That we have not been furnished with copies of the documents and records relied upon by SEBI and which were sought by us; we have thus been prevented from making a complete reply to the charges made against us.*

b. *That in the absence of complete trade and order log, it is not possible to determine whether a trade by our clients was synchronized or structured and to show that our clients had acted together with other persons who are alleged members of the alleged Mehta Group.*

c. *That we have sought copies of all the statements recorded by SEBI in the matter and particularly the statements of the following persons made in the SCN:*

   (i) Sunil Mehta - on the basis of the allegations and finding in para 9(c).

   (ii) Ajay Roongta - on the basis of the allegations and finding in para 9(f).

   (iii) Suresh Hanswal - on the basis of the allegations and finding in para 9(g).

   (iv) Bhanwarlal Paliwal - on the basis of the allegations and finding in para 9(h).

   (v) Pradesh - on the basis of the allegations and finding in para 9(l).

   (vi) Rajnish Jain - on the basis of the allegations and finding in para 9(m).

   (vii) Meen Been Elastomers Pvt. Ltd. - on the basis of the allegations and finding in para 14(iii)& (iv).

   (viii) Dilip Rathore - on the basis of the allegations and finding in para 14(v).

   (ix) Alpesh G Dand – ref. para 6(ix) - on the basis of the allegations and finding in para 9(j), 14(vi).

   (x) Manisha Mardia - on the basis of the allegations and finding in para 9(k) & 14 (vii).

d. *We have sought the statement of the above persons and the replies submitted by them since these statements have been referred to and it is therefore erroneous that SEBI has not relied upon the statements.*

e. *We have also sought copies of the documents based on which SEBI has arrived at findings regarding flow of funds between the various persons including us. We may be given opportunity to cross-examine the aforesaid persons.*

Vide letter dated April 7, 2011 Noticee again sought for the documents relied upon by SEBI and an opportunity to cross-examine the persons who made the statements and copies of all documentary evidence including records that relate to the fund flow.

9. Vide email dated April 26, 2011 Noticee was advised to appear before Investigation Authority on May 16, 2011 for inspections of relevant documents. Noticee inspected the relevant documents on May 18, 2011. I note that Noticee was given inspection of following documents:
   a. Complete trade and order log of the scrip ASCL.
   b. Extract of the statement of Mr. Sunil Mehta relevant to allegation in para 9(c) of the SCN.
   c. Extract of the statement of Mr. Ajay Roongta relevant to allegation in para 9 (f) and (n) in the SCN.
   d. Extract of the statement of Mr. Suresh Hanswal relevant to allegation in para 9 (g) in the SCN.
   e. Extract of the statement of Mr. Bhanwarlal Paliwal relevant to allegation in para 9 (h) in the SCN.
   f. Extract of the statement of Mr. Pradesh relevant to allegation in para 9 (l) in the SCN.
   g. Extract of the statement of Mr. Rajnish Jain relevant to allegation in para 9 (m) in the SCN.
   h. Extract of the statement of Meen Been Elastomers Pvt. Ltd. relevant to allegation in para 14(iii) & (iv) in the SCN.
   i. Extract of the statement of Mr. Dilip Rathore relevant to allegation in para 14(v) in the SCN.
   j. Extract of the statement of Mr. Alpesh G Dand relevant to allegation in para 9 (j) and 14(vi) in the SCN.
   k. Extract of the statement of Mrs. Manish Mardia relevant to allegation in para 9(k) & 14(vii) in the SCN.
   l. Ledger statement of Mr. Jitendra Jain wherein it reflects that amount has been paid to him by the Noticee.

10. Pursuant to the inspection, vide email dated May 30, 2011, Noticee was advised to submit reply by June 3, 2011. Vide letter dated June 8, 2011 Noticee acknowledged

the copies of the statements, trade & order log and ledger statements provided to them during the inspection; and made the following submissions:

a. *We acknowledge that we have been provided with copies of the documents and given an opportunity to inspect the same, we once again request that we may be provided an opportunity to cross-examine the persons whose statement have been relied upon by SEBI.*
b. *We submit that the statements as shown to us/copies furnished to us, do not appear to have been properly recorded and many portions of the statements have been scored out with black ink. The question put to the deponents are also not serially numbered and it is our submission that the said statements cannot be relied upon.*
c. *That the trade and order log provided to us show the orders placed by us and the counter party brokers and the trades that resulted therefrom, the trade and order log do not show the orders pending in the system at the time when the orders were placed by us. This information is very important and can show that our orders were one among the many market orders.*
d. *The said statement contains no reference to any alleged financial transaction between Mr. Mehta and us and no question have been put to Mr. Mehta by SEBI.*
e. *Mr. Mehta does not claim any relationship with us save that he Mr. Manish Mathur, or Ex CEO was his friend and that he had signed Mr. Bhanwarlal Paliwal's client registration form as an introducer.*
f. *That the statement of Mr. Ajay Roongta does not show that we are connected to the alleged "Mehta Group" or that we have acted with the entities and persons who are alleged to be part of that group. Furthermore, admittedly, he had left our services in 2005 and was not aware of our trades and/or the alleged synchronization of trades by our clients who traded in the scrip.*
g. *With reference to the statement of Mr. Bhanwarlal Paliwal, we submit that his statement that he does not know anything about share market and that he never traded in shares is a false statement. In this regard, it is pertinent to note that while opening a trading account with us in January 2008, he provided us with*

cheques issued by him to India Capital Markets, for the purpose of opening a trading account with them. This clearly demonstrates that Mr. Bhanwarlal Paliwal had trading account with India Capital Market. Secondly, he himself admitted that he had executed KYC for opening of trading account with us and later on instructed to close the account; however, we deny that we have received any such instruction letter. We once again request that we may be provided an opportunity to cross examine Mr. Bhanwarlal Paliwal.

h. *We reference to the statement of Mr. Pradesh Nimawat, we submit that he has clearly stated that he gave instructions to trade and that he had no intention to match his orders with counter parties. Therefore, his statement cannot be a basis to conclude that we were part of the alleged Mehta Group or that we had allegedly synchronized our orders with those of counter party brokers/clients.*

i. *With reference to the statement of Mr. Rajnish Jain, we submit that we have not traded on behalf of the persons in the shares of Asian Star. Moreover, Mr. Jain's statement makes it clear that he had a trading account with Bakliwal and therefore, it is probable that he traded in the said shares through Bakliwal.*

j. *With reference to the statement of Mr. Ravindra Parekh on behalf of M/s Meen Been Elastomers Pvt. Ltd. , we deny that we had decided the scrip, quantum and other factors relating to investment by the said company. We are not Portfolio Managers and have not acted as such. We have acted as per the instructions of Mr. Parekh and other authorized persons from the said company and have not taken any investment decision or placed orders on behalf of the said company on our own. Furthermore, we repeat, reiterate and submit the payments made by the said company to us related to the trades bone by them. For this reason, we once again request that we may be permitted to cross-examine the persons, including Mr. Parekh, whose statements are relied upon by SEBI.*

k. *We note that Mr. Dilip Rathore has not made any statement before the investigation officer of SEBI; rather he has sent two emails dated January 26, 2010 and April 26, 2010. We repeat, reiterate and submit that Me. Rathore had opened a Trading Account with us as per his request and after complying with all*

necessary KYC norms. We further repeat, reiterate and submit that we have traded only as per his instructions and deny everything to the contrary and inconsistent therewith. For this reason, we once again request that we may be permitted to cross examine the persons, including Mr. Rathore, whose statement are relied upon by SEBI.

l. With regard to the statement oF Mr. Alpesh Dand, it is pertinent to note that he has admitted to issuing instructions to us to trade in the scrip of Asian Star. In this regard, we submit that we do not give any investment advice to our clients; and recommendations that Mr. Dand may have received from any of our employees, who were his friends cannot be attributed to us and we are not liable for the same.

m. With regard to the statement of Mr. Amit Mardia, on behalf of Mrs. Manisha Mardia, we deny that we gave any investment advice to our clients; any recommendations that Mr. Dand may have received from any of our employees, who were his friends cannot be attributed to us and we are liable for the same. We repeat, reiterate and confirm that we traded in the scrip on Ms. Mardia's behalf only as per the instructions given by her and her husband. For this reason, we once again request that we may be permitted to cross examine the persons, including Ms. Manisha Mardia and or Mr. Amit Mardia, whose statement aer relied upon by SEBI.

n. With reference to ledger statement relating to account of Jitendra Jain, we submit that we have made pay outs to the said client upon his request and against credit balances in his account. The said payments cannot be the basis to allege that we were part of the said alleged "Mehta Group" and that we were connected to the persons as falsely alleged or otherwise.

11. In the interest of natural justice and in order to conduct an inquiry as per rule 4 (3) of the Rules, the Noticee was granted an opportunity of personal hearing on June 20, 2011 at SEBI, Head Office, Mumbai vide notice dated June 10, 2011 which was acknowledged by the Noticee. Noticee requested to reschedule the hearing and

accordingly Noticee was asked to appear on June 21, 2011. Mr. Joby Mathew and Mr. Dinanath Dubey, Authorized Representative (AR) appeared on behalf of Noticee and submitted that the reply dated June 8, 2011 is the final reply to the SCN. They sought for cross-examination of Sunil Mehta, Jitendra Jain, Bharat C Jain, Ravindra Parekh of Meen been Elastomers Ltd., Dilip Rathore, Alpesh Dand, Amit Mardia on behalf of Manisha Mardia and Bhanwarlal Paliwal. Noticee was asked to submit the written request received from Jitendra Jain for funding him and was further asked as to whether they were was following such practice to fund their clients, if so, how many such instances where there and; advised to submit the names of the clients along with the details of the funds transferred to such clients. Noticee undertook to submit the aforesaid details by June 30, 2011.

12. While the proceedings were in progress, Noticee was issued a supplementary SCN dated July 7, 2011 wherein instances of discrepancies by the Noticee in maintaining KYC forms of the clients were provided to them. Noticee was advised to comment on the same by July 15, 2011. Vide letter dated July 6, 2011, Noticee was again asked to submit the documents sought during the personal hearing and was informed that their request for cross examination of Sunil Mehta, Ravindra Parekh of Meen Been Elastomers Ltd., Alpesh Dand, Amit Mardia and Bhanwarlal Paliwal has been accepted and it was informed to Noticee that statements of Jitendra Jain, Bharat C Jain and Dilip Rathore were not relied upon for framing charges against them and hence, their request to cross examine aforesaid entities were not accepted. Vide letter dated July 7, 2011 Noticee submitted following:

    a. *That there was no written request from Jitendra Jain. We were not doing client funding.*
    b. *That Dilip Rathore was our client from 05/10/2007. AS far as his KYC is concerned, it has been misplaced.*

    Thereafter, vide email dated July 14, 2011 Noticee was advised to submit documentary evidence showing that Dilip Rathore had placed order through Noticee

for trading in the scrip of the company. However, no reply was received from Noticee in this regard.

13. Vide letter dated August 1, 2011, Noticee was summoned to appear for cross examination of Sunil Mehta, Ravindra Parekh, Alpesh Dand and Bhanwarlal Paliwal on August 22, August 23, August 24 and August 25, 2011 respectively. Noticee vide letter dated August 11, 2011 sought for adjournment. While the proceedings were in progress Noticee applied for consent order on July 15, 2011. Vide letter dated March 15, 2012 Noticee was informed that the consent application has been rejected. Hence, the proceeding kept in abeyance was commenced against the Noticee.

14. Vide letter dated June 1, 2012, Noticee was informed that their request for cross examination of Dilip Rathore has also been accepted hence Noticee was summoned to present for cross examination of Bhanwarlal Paliwal, Ravindra Parekh on June 18, 2012; Alpesh Dand, Amit Mardia on June 19, 2012 and Sunil Mehta, Dilip Rathore on June 20, 2012. Vide email dated June 15, 2012 Noticee was informed about the request of Bhanwarlal Paliwal for holding cross examination at his residence in Jaipur due to his ill health, thus, his cross examination was postponed. Vide email dated June 18, 2012 Noticee was informed that Amit Mardia has sought cross examination at Chennai due to his ill heath. Vide email dated June 20, 2012 Noticee sought for adjournment. Noticee was further informed about the cross examination of Bhanwarlal Paliwal and Amit Mardia that they have sought cross examination at Jaipur and Chennai and was advised to inform their availability for the same. Vide email dated September 18, 2012 Noticee showed their inability to appear for the cross examination and requested to postponed the same. Thereafter Noticee informed vide email dated September 20, 2012 they would not be able to go to Chennai and Udaipur for cross examination. Subsequent to that, vide email dated September 20, 2012 Noticee was asked to confirm whether they still wanted to cross examine Bhanwarlal Paliwal and Amit Mardia. However, No reply was received

from the Noticee. In view of the same the cross examination of Amit Mardia and Bhanwarilal Paliwal was not conducted.

15. Noticee was given two opportunities to cross examine Sunil Mehta and in both the occasions Noticee failed to appear. Vide letter dated June 22, 2012 Sunil Mehta submitted that he will not present himself before Noticee as he was present on August 22, 2011 and August 20, 2012.for the cross-examination. As enough opportunity was given to Noticee to cross examine Sunil Mehta and they failed to appear for the same hence, cross examination was dropped against Sunil Mehta.

16. Noticee was again summoned on July 11, 2012 to present for cross examination of Ravindra Parekh, Alpesh Dand and Dilip Rathore on July 25, 2012 which was later postponed to August 23 & 24, 2012. Vide email dated Noticee was informed about the request of Ravindra Parekh to postpone his cross examination. Joby Methew and Dinanath Dubey (AR) appeared for the cross examination of Alpesh Dand on August 24, 2012. Cross examination of Alpesh Dand could not take place since AR again asked for a copy of the full statement of Alpesh Dand. The copy of full statement of Alpesh Dand dated January 19, 2010 was provided to the AR. AR agreed to be present on the next date of cross examination as and when required by the Adjudicating Officer. Vide email dated August 27, 2012 Noticee was summoned to cross examine Alpesh Dand on August 31, 2012. However, no reply was received from the Noticee, neither did Noticee appear for the cross examination. Vide email dated September 4, 2012 Noticee was summoned for the final time to appear for cross examination of Ravindra Parekh and Alpesh Dand on September 21, 2012. Noticee vide email dated September 18, 2012 again sought for adjournment. Vide email and letter dated September 20, 2012 Noticee was informed that on various occasions they were given opportunity to cross examine Ravindra Parekh and Alpesh Dand hence, no further request for postponement was entertained and cross examination against the aforesaid entities were dropped.

17. In the interest of natural justice and in order to conduct an inquiry as per rule 4 (3) of the Rules, the Noticee was again granted an opportunity of personal hearing on October 3, 2012 at SEBI, Head Office, Mumbai vide notice dated September 21, 2012 which was acknowledged by the Noticee. Mr. Joby Mathew, AR, appeared on behalf of Noticee and sought time till October 8, 2012 to make further submissions. During the hearing AR was asked to provide contract notes issued to six clients namely Bharat C Jain, Meen Been, Dilip Rathore, Bhanwarlal Paliwal, Alpesh Dand and Manisha Mardia with the acknowledgement and steps taken by the Noticee to obtain duplicate KYC form from its client Dilip Rathore along with the documentary evidence. AR undertook to provide the same by October 8, 2012. It was noted during the hearing that Noticee failed to provide any written request received from Jitendra Jain for the amount which they have paid to him. It was further noted that the payment was made in excess of the credit balance of the client and on various instances payments were made to Jitendra Jain though he has not traded in the scrip of the company through Noticee. AR was asked to submit the due diligence exercised while making such payments along with the documentary evidences. He undertook to submit the reply by October 8, 2012. Vide letter dated October 8, 2012, Noticee was provided with a copy of email received from CDSL and NSDL stating that there is no demat account of Dilip Rathore with them. Noticee was asked to indicate whether the transaction done in the account of Dilip Rathore were delivery based and through which account the delivery was made from/to and how the pay-in/pay-out was met. Noticee was advised to provide the aforesaid information/documents by October 11, 2012.

18. Vide reply dated October 8, 2012 Noticee made the following further submissions:
    a. *That we have been unable to trace all contract notes issued to the aforesaid said clients; annexed hereto and marked as Annexure B are copies of the dispatched register and copies of proof of delivery slips received from our courier. Please note that once we came to know about the alleged manipulation and the alleged role of Manish Mathur, we have closed all retail operations and reduced our staff*

strength accordingly. Therefore, it is with grateful difficulty that we have been able to trace these contract notes and other documents.

b. *That we have discovered that the KYC and other documents relating to Dilip Rathore were missing and untraceable when SEBI sought the same from us in the course of investigation. Thereupon, we had contacted Dilip Rathore over telephone and requested him to provide us with copies of the KYC documents including client registration form and member constituent agreement. However, Dilip Rathore refused to do so and has not cooperated with us thereafter.*

c. *We repeat and reiterate and submit that we have made payments to Jitendra Jain on his oral requests. We submit that there is no irregularity or illegality in making payments to a client on his oral request. The ledger statement of the trading account of Jitendra Jain submitted by us to SEBI was for the period 01/08/2008 to 31/01/2009 as per the requirement of the investigation officer. The account of Jitendra Jain was closed on 15/5/2012.*

d. *It may be noted that Jitendra Jain mostly traded in F&O scrip during the relevant period and the credits in his account mostly related to the transactions in the F&O segment of the NSE.*

e. *As on September 11, 2009, Jitendra Jain had a credit balance of Rs. 6,01,224.28 in his account beside margins (a separate margin account was maintained). A payment of Rs. 8,84,500 was given to Jitendra Jain against the said credit balance and margins, Jitendra Jain made a payment of Rs. 3,80,000 on September 16, 2008 i.e. within 3 days and his account once again came into credit. It is pertinent to note that at no point during this time there was a shortfall in margin in the said client's account.*

f. *Jitendara Jain further requested and was given a payout of a total of Rs. 18 Lakh on October 23 & 27, 2010; he made payments totaling Rs. 17 Lakhs between December 31, 2009 and February 17, 2009 after which the account came into credit.*

g. *Jitendra Jain made an oral request for payout of Rs. 4,00,000 against a credit balance of Rs. 5,55,079.16 on March 25, 2009 and was given the same. The*

account remained un credit till it was closed on May 15, 2009 with a payout of Rs. 4,15,079.16. From the above it may be noted that payouts were made to Jitendra Jain when the account was in credit and when it was in debit. We had taken all due care to ensure that there was no margin shortfall in respect of the client's open F&O positions and only then was payout given to the client. Our prudence is confirmed by the fact that the account came into credit within a short time and remained so until it was closed.

19. Vide email dated October 9, 2012 Noticee was informed that they have not submitted contract notes of their clients as SEBI (Stock Brokers & Sub-brokers) Regulations, 1992 requires contract notes to be maintained by the broker for at least 5 years. Hence, copies of dispatch register and proof of delivery slips were not acceptable. Further Noticee was informed that no documentary proof of margin account of Jitendra Jain has been provided with the reply. Noticee was asked to provide the details of instances where they have adhere to oral requests of their clients and had made payments to them in excess of their credit balance along with the name of the clients, scrip in which they have traded and their ledger statements when such payments were made. Noticee was advised to provide the aforesaid information/documents by October 12, 2012. Further, Noticee was advised to reply to the supplementary SCN dated July 7, 2011. In reply to the query raised vide letter dated October 8, 2012 Noticee on October 12, 2012 informed that Dilip Rathore was doing jobbing business and his net position was always nil, hence, there was nil delivery received or given from/to his demat account. Vide email dated October 19, 2012 Noticee was informed that reply to the query raised vide email dated 9, 2012 and reply to the supplementary SCN dated July 7, 2011 has not been received. Vide another email dated October 31, 2012 Noticee was again advised to reply to the query raised vide email dated 9, 2012 and reply to the supplementary SCN dated July 7, 2011 by November 10, 2012. Noticee did not submit any reply to the aforesaid queries. I note that enough opportunity to submit requisite documents/information, reply to the supplementary SCN dated July 7, 2011 and

cross examine the Mehta Group entities has been provided to the Noticee. Noticee failed to submit the same.

CONSIDERATION OF ISSUES AND FINDINGS

20. I have carefully examined the SCN and the documents available on record. The allegations against the Noticee are as follows:

- The Noticee executed synchronized and structured, reversal transactions for his clients Bharat C Jain, Meen Been, Dilip Rathore, Bhanwarlal Paliwal, Alpesh Dand and Manisha Mardia.
- Noticee funded the transactions of Mehta Group.
- Noticee failed to carry out due diligence in respect of KYC forms of its clients.
- Noticee aided and abetted the alleged manipulative transactions in connivance with Sunil Mehta and failed to carry out its business with due, skill, care and diligence.

21. In view of the above it is alleged that the Noticee violated the provisions of Regulation 4(1), (2)(a), (b), (e) & (o) of PFUTP Regulations and Regulation 7 read with Clauses A(1), A(2), A(3), A(4) & A(5) of Code of Conduct for Stock Brokers as specified in Schedule II of the SEBI Stock Brokers Regulation, 1992.

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

a) Whether Noticee executed synchronized and structured, reversal transactions for their clients Bharat C Jain, Meen Been, Dilip Rathore, Bhanwarlal Paliwal, Alpesh Dand and Manisha Mardia.
b) Whether Noticee funded the transactions of Mehta Group.
c) Whether Noticee failed to carry out due diligence in respect of KYC forms of its clients.

d) Whether Noticee aided and abetted the alleged manipulative transactions in connivance with Sunil Mehta and failed to carry out its business with due, skill, care and diligence.

e) Does the violation, if any, on the part of the Noticee attract monetary penalty under sections 15HA and 15HB of the SEBI Act?

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-

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

(b) dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss;

(c) ……

(d) ……

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

(f) ……

(o) encouraging the client by an intermediary to dealt in securities solely with the object of enhancing his brokerage or commission.

Stock-Brokers to abide by Code of Conduct.

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.

FINDINGS:

24. I now proceed with the findings in connection with the role of the Noticee on the violations as alleged. Upon careful perusal of the material available on record, I find the following:

(a) I note that at BSE the price of the scrip opened at ₹ 1,240.00 on October 10, 2008 while it closed at ₹ 1,101.55 on the same day. The closing price of the scrip on November 20, 2008 was ₹ 1306.15 (close to close 18.57 % rise in 28 trading days). During the same period Sensex had fallen by 19.73 % (from 10,527.85 to 8,451.01). The total traded quantity for the entire investigation period on BSE was 1974219 shares. Subsequent to the investigation period the price had started to fall and closed at ₹ 905 on January 30, 2009.

(b) I note that there was neither price sensitive news/announcement which might have supported the price. Also the financial results of the company do not justify the price rise in the scrip of ASCL. On October 16, 2008 company declared the results of the quarter ending September 30, 2008 which showed that the net profit has declined from ₹ 110.659 million to ₹ 106.439 million than the same quarter of the previous year.

(c) Analysis of trading pattern revealed that the Noticee had maximum concentration in gross purchase at 26.25 % followed by broker B P Equities Pvt. Ltd. (hereinafter referred to as "BP Equities"), Swastika Investment Ltd (hereinafter referred to as "Swastika") and Emkay Global Financial Services Ltd (hereinafter referred to as "Emkay Global") at 19.27 %, 17.97 % and 16.97 % respectively.

(d) As per the trade and order log Bharat C Jain, Meen Been, Dilip Rathore, Bhanwarlal Paliwal, Alpesh Dand and Manisha Mardia traded through Noticee and bought and sold following numbers of shares:

Name of the Client	**Purchased**		**Sold**	
	Qty	**% of total Qty traded during investigation period**	**Qty**	**% of total Qty traded during investigation period**
Bharat	160099	8.11	160099	8.11
Meen Been	116300	5.89	116300	5.89

Dilip Rathod	59242	3	59242	3
Bhanwarlal	57162	2.9	57162	2.9
Alpesh Dand	16217	0.82	16217	0.82
Manisha	15628	0.79	15628	0.79
Total	**424648**	**21.51**	**424648**	**21.51**
Grand Total	**518285**	**26.25**	**518285**	**26.25**

(e) From the trade and order log analysis it is noted that the Bharat C Jain, Meen Been, Dilip Rathore, Bhanwarlal Paliwal, Alpesh Dand, Manisha Mardia, Usha Mehta, Sunil Mehta, Sandeep Jain, Jitendra Jain, Suresh Hanswal, Pradesh Nimawat, Arun Manohar Sakpal, Narendra Sanghi and Rajnish Jain were found to be trading among themselves. These entities were found to be linked with each other through Sunil Mehta, Ajay Roongta, Manish Mathur and together formed **"Mehta group"**. The relationship/connection of the Mehta group entities is elaborated below:

i) Sandeep was introduced to Swastika by Jitendra while address of Jitendra mentioned is same as that of office of Suresh Hanswal and Pradesh (as per KYC with Swastika). Further, towards the pay in obligation of Sandeep, cheques from the account of Suresh and Pradesh have been deposited. Further, Sandeep and Pradesh have submitted before the Investigating Authority (hereinafter referred to as **"IA"**) that they are friends.

ii) Jitendra has provided email id of Sunil Mehta in the KYC with Emkay Global. He has found to enter into bank account transactions with Sunil Mehta, Usha Mehta, Anjana Mehta (wife of Sunil Mehta), Gopal Lal Mathur (Father of Manish Mathur, CEO of Noticee). He was found to have entered huge bank account transactions with the Noticee also while he had no pay in/out obligation at the relevant time. He also shares same address (Evershine Millenium Park, EMP 47, Flat no. 1804, Thakur Village, Kandivali (E), Mumbai, Maharashtra, 400101) and phone number (9322123256) with Sunil Mehta (As per KYC with BP Equity).

iii) Sunil Mehta is the son of Usha Mehta. He shares same phone number (9322123257) as well as joint bank account (HDFC Kandivali Bank account No-01821000063096) with Usha Mehta. He shares same phone number (9322123257) with Jitendra (as per KYC with Emkay) and also with Pradesh (as per KYC with First Global). Pradesh has given Sunil Mehta's email Id in KYC with First Global. Sunil Mehta found to have entered in to bank account transaction with the Noticee (while there was no pay in obligation at the relevant time as per the ledger statements with them), Jitendra, Suresh, Gopal Lal Mathur and Seema Mathur (Wife of Manish Mathur, CEO of Noticee). He has submitted before the IA that he knows/ or friends with Jitendra, Suresh, Pradesh, Ajay Roongta and Manish Mathur. He has also submitted before the IA that the trading account of Usha Mehta was being operated by him. Further, he has also submitted that trading account of Jitendra was being jointly operated by him and Jitendra. Some time he used to place orders and some time Jitendara used to place orders.

iv) Usha Mehta, Sunil Mehta and Jitendra are introduced to Arcadia by Pradesh and Suresh Hanswal.

v) Bharat C. Jain is the client of the Noticee and was found to have entered into huge synchronized and structured transaction with Sandeep, Sunil Mehta, Ms Usha Mehta, Jitendra Kumar Jain, Meen Been, Suresh Hanswal, Arun Sakpal, Narendra Sanghi. During the period of Investigation Bharat and Sunil Mehta both had dealt in 31 scrips and 25 out of that are common.

vi) Arun Sakpal used to work in the same branch of Bakliwal where Ajay Roongta was branch manager. Further, Ajay Roongta has submitted before IA that he had provided funds to him.

vii) Suresh Hanswal submitted that Sunil Mehta is his friend and he had dealt in the scrip on the advice of Sunil Mehta. Suresh and Pradesh is partner in Siddhi Shares and share the same office in Udaipur. Suresh had also submitted that Jitendra is his friend.

viii) Bhanwar Lal Paliwal submitted that it was Sunil Mehta who opened his account with the Noticee.

ix) Narendra Sanghi submitted that he is a friend of Ajay Roongta. Further, Ajay Roongta was found to have transferred funds to Narendra which was utilized by Narendra towards his pay in obligations.

x) Alpesh G Dand submitted that it was Noticee who was dealing in his account. He had allowed them to deal in the scrip (while Noticee suggested them to deal in the scrip) under the overall limit of ₹ 150000/-.

xi) Manisha Mardia also submitted that the Noticee suggested her to invest in the scrip. Hence she decided the overall exposure limits while the actual buy and sell was done by the Noticee on their own terminal.

xii) Pradesh submitted that his account with broker First Global was opened by his friend Sunil Mehta with his consent and he does not remember whether the trading was done by him or Sunil Mehta. He has also submitted that he had borrowed funds from Sunil Mehta for the purpose of trading. He had provided email Id of Sunil Mehta in the KYC with First Global. Pradesh was also introduced to Bakliwal by Sunil Mehta and in the KYC address of him is same as that of Sunil Mehta.

xiii) Rajnish Jain submitted that he knows Sunil Mehta through common friend Ajay Roongta. Rajnish was introduced to Bakliwal by Ajay Roongta.

xiv) As per the submissions of Ajay Roongta, Sunil Mehta used to visit Bakliwal branch where Arun Sakpal was also employed and hence known to him. Sunil Mehta has also submitted that he knows Arun Sakpal. Ajay Roongta further submitted that Sunil Mehta was introduced to him by Manish Mathur who is working with Noticee as “Chief Operations”. Both Sunil Mehta and Manish Mathur have accepted that they are friends. Further it was observed that there was fund flow between Sunil on one hand while Seema Mathur and Gopal Lal Mathur on the other hand.

(f) Noticee in its reply had submitted that details, records and statements which have been relied upon by SEBI to arrive at the allegations and findings set out in the SCN has not been provided to them. I note that on the request of Noticee, all the documents sought by them and on the basis of which charges were framed in the SCN were provided to them. Further, they were also given opportunity to inspect the documents and to cross examine the persons whose statements were relied upon in framing charges in the SCN. Hence, I note that the principle of natural justice was duly followed.

(g) I note that Mehta Group entities, which were connected to each other, were found to be entering into transactions which were in the nature of reversal of trade. Most of these transactions were in synchronized trades (less than one minute difference between buy and sell orders) and structured trades (i.e. not only time of buy and sell order was within 1 minute but the order price and quantity was also matching). I note that large numbers of synchronized were being entered into mostly by few brokers trading for their clients on almost every traded day during the period. I note that out of total 6953 number of synchronized deals the contribution of the brokers were as follows:- Noticee contributed 1903 deals, India Infoline contributed 325 deals, while BP Equities, Swastika, Emkay Global, contributed 1224, 1396 and 1058 deals respectively. I note that the Noticee's contribution was the highest among the selected brokers. I further note that out of these synchronized deals large number of deals were also structured (i.e. not only time of buy and sell order was within 1 minute but the order price and quantity was also matching).

(h) I also note that that there was significant reversal of trades between the above brokers trading for their clients. I find that the brokers were reversing almost all the trades during the same day and that to with the same counterparty brokers or out of the above brokers. Further, as observed earlier most of these trades

were synchronized transactions. Details of the trading of the Mehta group are summarized below:-

Date	Market Volume (A)	No. of Trades (B)	Synchronized trades (C)				Structured Trades (D)				Net Volume	Net Vol % of Total	Close to Close (Asian Star)	Close to Close (Sensex)
			Volume	As % of A	Number	As % of B	Volume	As % of A	Number	As % of B				
10 October 2008	75840	217	74086	97.69	168	77.42	36271	47.83	82	37.79	609	0.8	-12.86	-7.07
13 October 2008	79751	270	78443	98.36	183	67.78	29621	37.14	62	22.96	989	1.24	18.77	7.42
14 October 2008	76101	236	67677	88.93	145	61.44	19873	26.11	45	19.07	10	0.01	-0.64	1.54
15 October 2008	75671	272	67253	88.88	241	88.60	21123	27.91	54	19.85	9	0.01	-1.02	-5.87
16 October 2008	78110	232	77874	99.70	196	84.48	32478	41.58	77	33.19	67	0.09	-2.25	-2.11
17 October 2008	84475	354	72551	85.88	231	65.25	25124	29.74	69	19.49	61	0.07	-0.6	-5.73
20 October 2008	76012	332	75009	98.68	248	74.70	48361	63.62	152	45.78	221	0.29	6.49	2.48
21 October 2008	76572	273	66303	86.59	222	81.32	41283	53.91	135	49.45	37	0.05	-0.62	4.5
22 October 2008	76027	257	60469	79.54	180	70.04	36668	48.23	107	41.63	7	0.01	-2.82	-4.81
23 October 2008	77647	233	57669	74.27	169	72.53	38175	49.16	109	46.78	16	0.02	0.87	-3.92
24 October 2008	79267	273	75803	95.63	206	75.46	34310	43.28	90	32.97	128	0.16	-9.22	-10.96
27 October 2008	78049	321	58679	75.18	213	66.36	35037	44.89	100	31.15	N.A	N.A	10.83	-2.2
28 October 2008	16553	42	8900	53.77	18	42.86	7900	47.73	16	38.10	195	1.18	1.12	5.86
29 October 2008	77436	272	59567	76.92	203	74.63	36363	46.96	124	45.59	40	0.05	0.98	0.4
31 October 2008	76105	325	75828	99.64	297	91.38	37909	49.81	103	31.69	26	0.03	0.77	8.22
3 November 2008	77837	334	63339	81.37	192	57.49	32852	42.21	95	28.44	201	0.26	-0.29	5.62
4 November 2008	77532	289	53991	69.64	205	70.93	18787	24.23	45	15.57	28	0.04	-1.31	2.84
5 November 2008	79442	333	69956	88.06	267	80.18	43387	54.61	115	34.53	43	0.05	0.36	-4.81
6 November 2008	81835	319	76397	93.35	274	85.89	53942	65.92	153	47.96	9	0.01	-0.37	-3.81
7 November 2008	80304	337	77240	96.18	262	77.74	58070	72.31	167	49.55	28	0.03	-0.97	2.36
10 November 2008	78217	363	71420	91.31	275	75.76	51061	65.28	145	39.94	38	0.05	0.61	5.74
11 November 2008	77834	342	50261	64.57	186	54.39	24577	31.58	72	21.05	10	0.01	-0.33	-6.61
12 November 2008	58973	334	44575	75.59	160	47.90	14307	24.26	42	12.57	128	0.22	-1.44	-3.08
14 November 2008	56468	358	53404	94.57	249	69.55	29285	51.86	83	23.18	30	0.05	-1.33	-1.58
17 November 2008	55811	347	54553	97.75	214	61.67	24221	43.40	79	22.77	200	0.36	3.15	-1.01
18 November 2008	55199	316	54241	98.26	253	80.06	23528	42.62	64	20.25	31	0.06	-0.42	-3.81
19 November 2008	55106	304	54357	98.64	265	87.17	20264	36.77	63	20.72	18	0.03	0.02	-1.83
20 November 2008	36045	246	34141	94.72	159	64.63	12647	35.09	44	17.89	105	0.29	-0.36	-3.68
Grand Total	**1974219**	**8131**	**1733986**	**87.83**	**5881**	**72.33**	**887424**	**44.95**	**2492**	**30.65**	**3284**	**0.17**	**18.57**	**-19.73**

(i) I note that the group dealt in synchronized, structured and reversal trades which accounted for significant percentage of the total market volume both in terms of quantity traded as well as number of trades. Daily net trade has remained insignificant. When most of the trading was being contributed in synchronized trades by the Mehta Group, price of the scrip was going up while the Sensex was going down. I note that 87.83% of the total market volume and 72.33% of the total number of trades were contributed by synchronized trading and 44.95% of

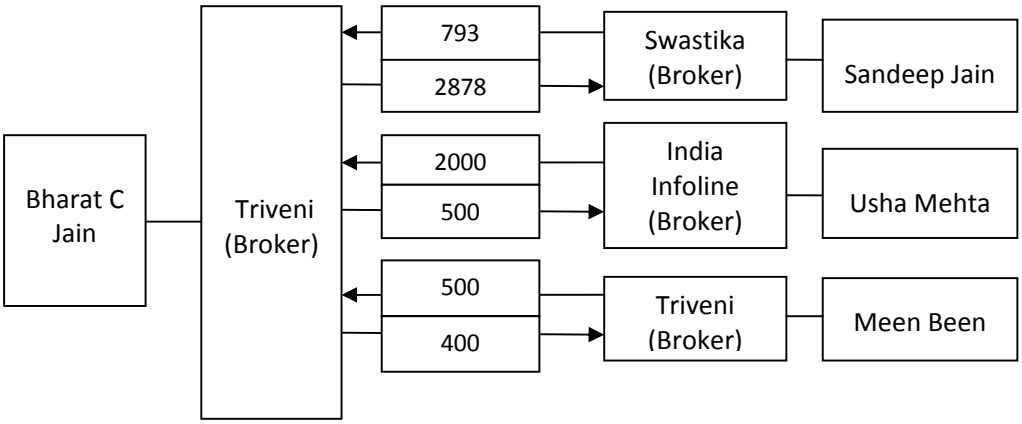
the total market volume and 85.51% of the total number of trades were contributed by structured trades.

(j) Circular and reversal trades executed by Mehta group during the investigation period is given below:

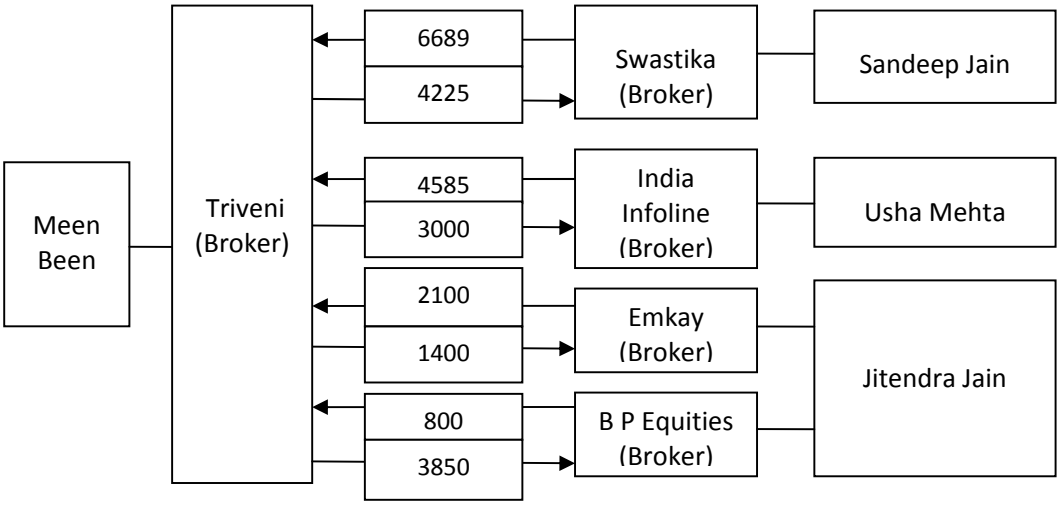
Buy Client		Sell Client														
	Alpesh	Arun	Bhanwar Lal	Bharat	Dilip	Jitendra	Manisha	Meen Been	Narendra	Pradesh	Rajnish	Sandeep	Sunil Mehta	Suresh	Usha Mehta	Total
Alpesh	0	2000	0	0	0	2900	0	0	1200	0	0	1450	7874	750	0	16174
Arun	1000	0	16000	6480	7300	10718	0	6700	871	0	0	10956	13981	900	0	74906
Bhanwarlal	0	500	0	1	0	16310	0	0	0	0	0	12810	23370	3100	0	56091
Bharat	0	5473	0	0	0	47629	0	0	3606	0	0	35249	51144	5508	10950	159559
Dilip	0	2300	0	0	0	12688	0	0	1700	0	0	9437	26729	1784	4400	59038
Jitendra	2900	13645	4905	50859	15752	1	8998	27041	17043	3015	3602	98434	59731	9740	51731	367397
Manisha	0	0	0	0	0	7947	0	0	0	3000	0	470	3300	0	600	15317
Meen Been	0	5354	0	1	0	45536	0	10	0	750	0	21296	32585	0	10085	115617
Narendra	0	0	0	6300	7300	9977	0	7645	0	0	1000	12304	2500	0	0	47026
Pradesh	0	0	0	500	0	1500	0	1265	0	0	0	380	1620	0	0	5265
Rajnish	0	0	0	0	0	4536	0	0	1750	0	0	1751	0	0	0	8037
Sandeep	3800	20241	12818	33061	11452	108196	1400	20669	16756	500	3056	23	50509	19821	36322	338624
Sunil Mehta	2211	20784	13216	20041	8959	61900	4319	28490	5595	2000	0	82998	0	17759	23421	291693
Suresh	2100	1650	9453	12836	250	9634	0	0	0	0	0	11631	13005	0	350	60909
Usha Mehta	4100	0	0	26649	7950	18001	600	23405	0	0	380	31350	8150	350	0	120935
Total	**16111**	**71947**	**56392**	**156728**	**58963**	**357473**	**15317**	**115225**	**48521**	**9265**	**8038**	**330539**	**294498**	**59712**	**137859**	**1736588**

I note that Noticee entered into trades for Bharat C Jain, Meen Been, Dilip Rathore, Bhanwarlal Paliwal, Alpesh Dand and Manisha Mardia which were in the nature of circular and reversal. I find that such reversal trading was executed by the Noticee from October 10, 2008 to November 20, 2008 with the Mehta group entities only. The above trades led to manipulation of the volume and influenced the price of the scrip.

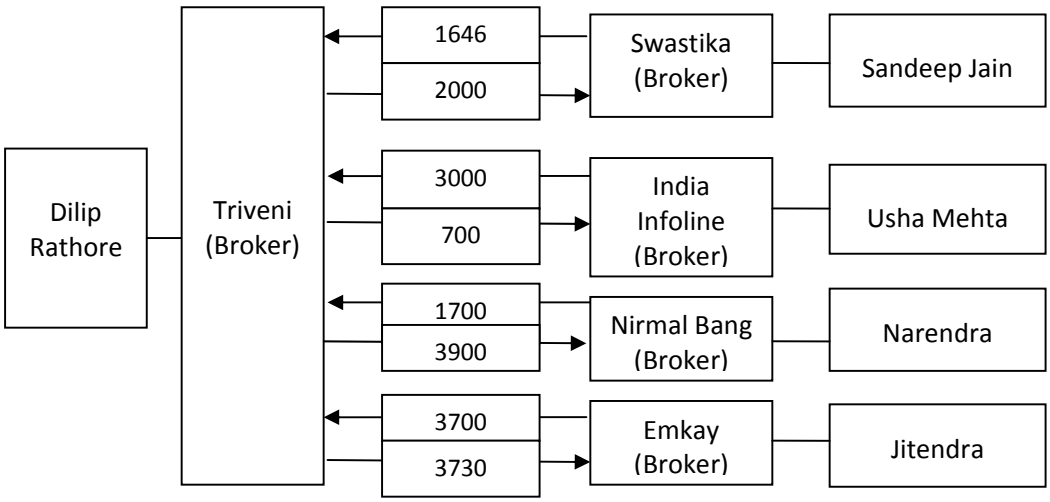
The pictorial representation of reversal trades executed in the trading account of Bharat C Jain on October 13, 2008 is given below:



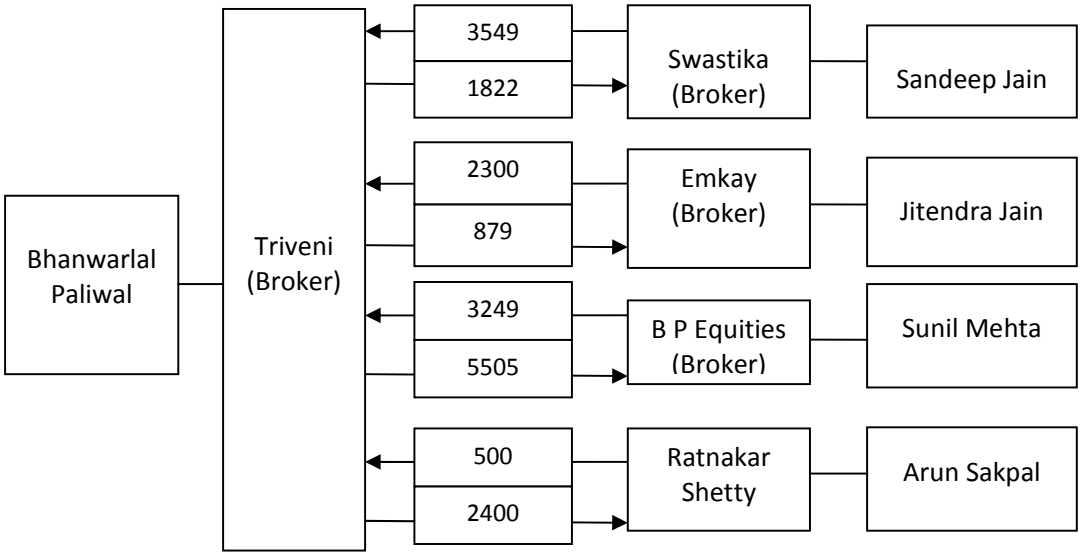
The pictorial representation of reversal trades executed in the trading account of Meen Been on October 10, 2008 is given below:



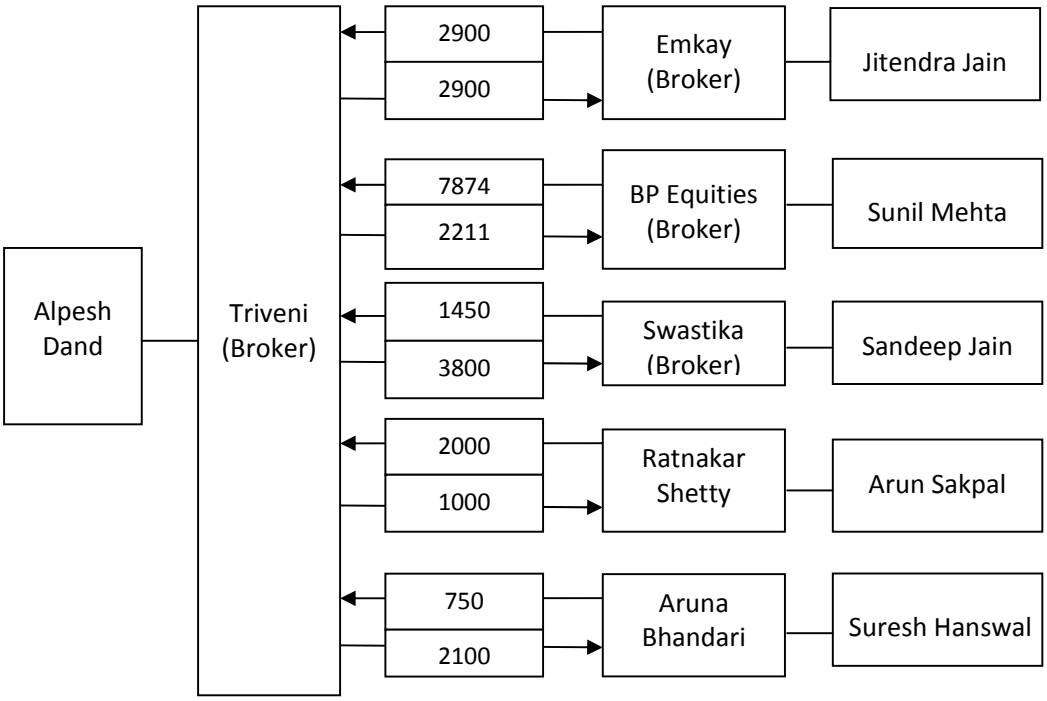
The pictorial representation of reversal trades executed in the trading account of Dilip Rathore on October 10, 2008 is given below:



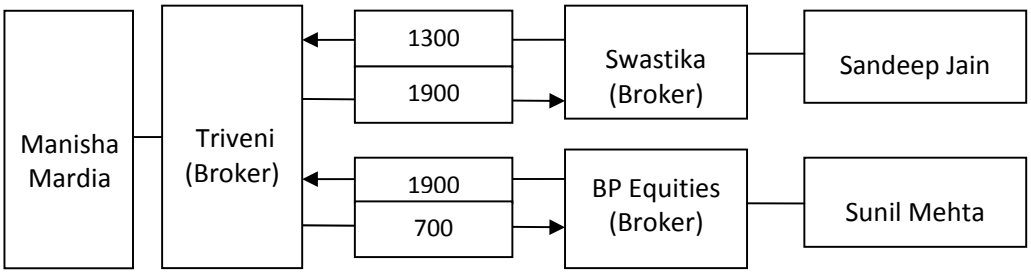
The pictorial representation of reversal of trades executed on November 10, 2008 is given below:



The pictorial representation of reversal of trades executed on November 7, 2008 is given below:



The pictorial representation of reversal of trades executed on October 23, 2008 is given below:



This pattern of trading executed by the Noticee was observed throughout the investigation period within the Mehta group.

(k) Details of the trading by Noticee on behalf of Mehta Group entities during the investigation period are as given below:-

Name of the Client	Purchased		Sold		Synchronized for Mehta group		Structured for Mehta group	
	Qty	% of total Qty traded during investigation period	Qty	% of total Qty traded during investigation period	Buy Qty (% of total Purchased Qty during investigation period)	Sell Qty (% of total sell Qty during investigation period)	Sell Qty (% of total Qty purchased during investigation period)	Qty (% of total Qty sold during investigation period)
Bharat	160099	8.11	160099	8.11	158802 (99.19%)	156621 (97.83%)	60778 (37.96%)	81596 (50.97%)
Meen Been	116300	5.89	116300	5.89	115590 (99.39%)	115041 (98.92%)	43146 (37.09%)	46034 (39.58%)
Dilip Rathod	59242	3	59242	3	59038 (99.66%)	58864 (99.36%)	25371 (42.83%)	28380 (47.91%)
Bhanwarlal	57162	2.9	57162	2.9	56070 (98.09%)	56087 (98.12%)	21062 (36.85%)	28522 (49.90%)
Alpesh Dand	16217	0.82	16217	0.82	16174 (99.73%)	16111 (99.35%)	9312 (57.42%)	10761 (66.36%)
Manisha	15628	0.79	15628	0.79	15317 (98.01%)	15287 (97.82%)	7112 (45.51%)	7233 (46.28%)
Total	**424648**	**21.51**	**424648**	**21.51**	**420991 (99.14%)**	**418011 (98.43%)**	**166781 (39.28%)**	**202526 (47.69%)**
Grand Total	**518285**	**26.25**	**518285**	**26.25**				

(l) It was observed from the trading pattern that during the period of investigation Noticee had bought and sold 518285 (26.25% of total market trade) and 518285 (26.25% of total market trade) shares respectively of the company for its clients. It was observed that its entire buy and sell trades were concentrated between the certain counterparties. It was further observed that it sold 424648 (21.51 % of the total market trade) shares for the clients who belong to the Mehta Group; 420991 shares amounting to 99.14% of total buy quantity and 418011 shares amounting to 98.43% of total sell quantity were found to be in synchronized transactions; and 166781 shares amounting to 39.28 % of total buy quantity and 202526 shares amounting to 47.69% of total sell quantity were found to be in structured trades.

(m) I note that Bharat C Jain was client of the Noticee who was found to have entered into synchronized and structured transaction with Sunil Mehta, Usha Mehta, Jitendra Jain, Sandeep Jain, Meen Been, Suresh Hanswal, Arun Manohar Sakpal and Narendra Sanghi. Noticee on behalf of Bharat C Jain entered into 647

buy and 452 sell trades for 158802 shares and 156621 shares respectively during the investigation period which was synchronized trades; and 176 buy and 223 sell orders for 60778 shares and 81596 shares respectively which were found to be structured with the Mehta group. It was alleged in the SCN that the aforesaid synchronized and structured trades were placed through the Noticee. I note that demand draft (DD No. 021533 of ₹ 6,00,000 dated February 10, 2009) was issued by Jitendra Jain in Bharat C Jain's favor. The voucher to make the demand draft was filled by Sunil Mehta who accepted the same before investigation. The said demand draft was deposited in Bharat C Jain's bank account No. 11025 maintained with Bombay Mercantile Co-operative Bank Ltd. This shows clear nexus between Bharat C Jain, Jitendra Jain and Sunil Mehta. The trades were being placed through the Noticee who was found to be related to Sunil Mehta through its Chief Operating Officer, Manish Mathur.

(n) I note that Meen Been was client of the Noticee who was found to have entered into synchronized and structured transaction with Sunil Mehta, Usha Mehta, Jitendra Jain, Sandeep Jain, Suresh Hanswal, Arun Manohar Sakpal and Narendra Sanghi. Noticee on behalf of Meen Been entered into buy and 339 sell trades for 115590 shares and 115041 shares respectively during the investigation period which was synchronized trades with the Mehta Group; and 120 buy and 132 sell orders for 43146 shares and 46034 shares respectively which were found to be structured with the Mehta Group. I note that all the counterparties of the Meen Been were found to be related to the Noticee (through Sunil Mehta and Manish Mathur). Meen Been claimed that they invest the surplus funds of the company and it was Noticee who was advising to invest in the scrip of the company. Meen Been also submitted before IA that his reply was prepared by the Noticee since trading in his account was done by them only.

(o) I note that Dilip Rathore was client of the Noticee who was found to have entered into synchronized and structured transaction with Sunil Mehta, Usha Mehta, Jitendra Jain, Sandeep Jain, Suresh Hanswal, Arun Manohar Sakpal and

Narendra Sanghi. Noticee on behalf of Dilip S Rathod entered into 216 buy and 183 sell trades for 59038 shares and 58864 shares respectively during the investigation period which was synchronized trades with the Mehta Group; and entered into 80 buy and 75 sell orders for 25371 shares and 28380 shares respectively which were found to be structured with the Mehta Group. During the course of proceedings Noticee was asked to provide the KYC, demat account number, proof of payment of funds for the transaction and prove that the orders were placed by Dilip Rathore. But Noticee failed to produce any such evidence before me. Noticee in its reply has submitted that Dilip Rathore was doing jobbing business and his net position was always nil, hence, there was nil delivery received or given from/to his demat account. Noticee further submitted that the KYC form of Dilip Rathore was misplaced, this raises suspicion regarding the Noticee's claim that they were placing order on the request of Dilip Rathore. From the documents available on record I note that some cheques were issued by Dilip Rathore to Noticee. On perusal of the copies of bank statements and alleged transactions I note that the said transactions of amount ₹ 2,23,000 and ₹ 1,00,000 were made on October 01, 2007 and October 05, 2007 respectively and were addressed and issued to the Noticee showing funds were transferred from Dilip Rathore's account to the account of the Noticee. This brings out clear connection of the Noticee with Dilip Rathore. Hence, I conclude that Noticee traded in the account of Dilip Rathore and manipulated the price of the scrip of the company.

(p) I note that Alpesh Dand was client of the Noticee who was found to have entered into synchronized and structured transaction with Sunil Mehta, Usha Mehta, Jitendra Jain, Sandeep Jain, Suresh Hanswal, Arun Manohar Sakpal and Narendra Sanghi. Noticee on behalf of Alpesh Dand entered into 72 buy and 45 sell trades for 16174 shares and 16111 shares respectively during the investigation period which was synchronized trades with the Mehta Group; and 25 buy and 27 sell orders for 9312 shares and 10761 shares respectively which

were found to be structured with the Mehta Group. Alpesh Dand has also submitted that he had asked Noticee to trade in the scrip till profit and loss position of ₹ 1,50,000/- and it was Noticee who actually traded in the shares in his account. Noticee claimed that they have not given any investment advice. Noticee was asked during the proceedings to submit contract notes for the trades executed on behalf of its clients, however the Noticee failed to do so. The claim of the Noticee that they were acting as per the instructions of Alpesh Dand thus cannot be accepted as it cannot even produce the bare minimum document in the form of contract note which could have been an evidence to show that the client placed the order and the Noticee executed trades as per the client's instruction.

(q) It is observed that its client Manisha Mardia entered into synchronized and structured transaction with Sunil Mehta, Usha Mehta, Jitendra Jain, Sandeep Jain and Pradesh Nimawat. Noticee on behalf of Manisha Mardia entered into 57 buy and 54 sell trades for 15317 shares and 15287 shares respectively during the investigation period which was synchronized trades with the Mehta Group; and 29 buy and 28 sell orders for 7112 shares and 7233 shares respectively which were found to be structured with the Mehta Group. Amit Mardia authorized representative of Manisha Mardia has submitted before IA that Noticee used to give tips/ advice for trading in the scrips and on their approval used to trade in their account and decide time, price and quantity of all the orders. It was therefore alleged that Noticee traded in the scrip of Asian Star through trading account of Manisha Mardia and allegedly manipulate the scrip. Noticee denied the allegations of Amit Mardia and submitted that they have traded on behalf of Manisha Mardia as per the instructions given by her and her husband. However Noticee could not produce any document/ contract notes to support its claim.

(r) I note that Bhanwarlal Paliwal was client of the Noticee who was found to have entered into synchronized and structured transaction with Sunil Mehta, Jitendra Kumar Jain, Sandeep Jain, Suresh Hanswal and Arun Manohar Sakpal. Noticee on

behalf of Bhanwarlal Paliwal entered into 161 buy and 206 sell trades for 56070 shares and 56087 shares respectively during the investigation period which was synchronized trades; and 56 buy and 73 sell orders for 21062 shares and 28522 shares respectively which were found to be structured with the Mehta group. It was alleged in the SCN that the aforesaid synchronized and structured trades were placed through the Noticee. Bhanwarlal Paliwal has submitted before IA that he was not having knowledge of any trading in his account and Sunil Mehta approached him with some forms of the Noticee and asked him to open account. He further submitted that documents were signed by him but later he instructed Noticee to close the account as he does not intend to do trading. I note that the orders of the Bhanwarlal Palwial were being placed through Noticee whose clients were also part of Mehta group and found to be trading in a synchronized and structured manner. Noticee was found to be related to Sunil Mehta through its Chief Operating Officer, Manish Mathur. From the KYC of Bhanwarlal Paliwal I note that Jitendra Jain had signed as introducer who was also found to be part of Mehta Group and client of Noticee. Noticee executed trades in the account of Bhanwarlal Paliwal and the trades were synchronized/structured, circular in nature that too each time with the clients of the Mehta group. This entire pattern can't be mere co-incidence. Hence, I find that Noticee executed synchronized and structured trades and contributed in manipulating the scrip of the scrip of the company.

(s) I note that apart from the connections with the Mehta Group mentioned at para 24(e), Noticee was also found to be connected with Sunil Mehta through Manish Mathur, CEO of the Noticee. There was extensive fund flow between Noticee (without any pay in or pay out obligation), Sunil Mehta, Jitendra Jain and related entities were observed. Few instances are mentioned below:

(i) On September 13, 2008 Jitendra got ₹ 884500 vide cheque no 861556 from the Noticee (though there was only ₹ 601224.28 credit in his ledger account)

in his account no. 1821000069637. Out of the abovementioned account ₹ 200000 was withdrawn in cash and ₹ 200000 and ₹ 105000 was transferred to Anjana Mehta (wife of Sunil Mehta) and Sunil Mehta respectively on the same day vide cheque no's. 867018 and 867017 respectively. ₹ 380000 was returned back to the Noticee on September 17, 2008 vide cheque no. 867020.

(ii) On October 21, 2008 Jitendra got ₹ 1000000/- vide cheque no 861580 from the Noticee (though there was only ₹ 148079.16 credit in his ledger account). Jitendra got further ₹ 500000/- from the Noticee (taking his account to further debit) on October 22, 2008 vide cheque no 861581. The amount of ₹ 1000000/- was withdrawn in cash on October 21, 2008 itself. It was also observed that around the same period on October 23, 2008 ₹ 100000/- and on October 27, 2008 ₹ 800000/- cash was deposited in Sunil Mehta's account no 1821000057910 and on October 27, 2008 ₹ 20000/- was deposited in the account no 1191000085001 of Suresh Hanswal. Further cash ₹ 250000/- was withdrawn on October 22, 2008 while ₹ 200000/- was deposited in the account of Sunil Mehta on November 3, 2008. While on October 22, 2008 ₹ 250000/- was paid vide cheque no 953054 to Gopal Lal Mathur (father of Manish Mathur, CEO of Noticee, which was stated by him as loan taken from a client).

(iii) On October 29, 2008 ₹ 300000/- was deposited in Jitendra's account vide cheque no 861588 from Noticee's account (though already there was ₹ 1351920.84 debit in his ledger account before that). The same amount was immediately transferred to Sunil Mehta's account no 1821000057910 vide cheque no 867025 on the same day.

(t) Noticee submitted that Jitendra Jain periodically requested for payout of certain sum of monies which they had provided to him and these payouts were made

upon his oral requests. Noticee was asked to furnish the due diligence conducted by them before making such payouts as payments were made in excess of the credit balance of Jitendra Jain and on various instances payments were made to him though he has not traded in the scrip of the company ASCL through the Noticee. In reply to that Noticee submitted the ledger account from 01/10/2008 to 31/05/2009 of Jitendra Jain. On perusal of the said ledger account I note that Noticee was debiting amount more than the amount available in the credit. Noticee in its reply has not been able to provide any valid reason as to the aforesaid observation neither did Noticee was able to produce any documentary proof to substantiate its claim that payouts were made to Jitendra Jain against the credit balance in his account. I note that that the amount transferred to Jitendra Jain by the Noticee was further transferred to the Mehta Group entities for meeting their pay-in/pay-out obligations. Thus, I note that Jitendra's account was used as conduit for transfer of funds by Sunil Mehta which is evident from the submission of Sunil Mehta that he was jointly operating trading account of Jitendra. The above transactions show the close coordination and nexus between the Noticee, Sunil and Jitendra for manipulation purpose.

(u) It was observed that there were glaring mistakes in maintaining KYC forms of the clients. Instances of such discrepancies in respect of the clients who traded through the Noticee in the scrip of ASCL are given below:

Sl. No.	Name of the clients	Deficiencies in KYC
1.	Bharat C Jain	Introducer details of the client, date of signing KYC, demat account details, broking activities details, market segment details, occupation, education and income of the clients were not mentioned
2.	Meen Been Elastomers Ltd	Introducer details of the client, broking activities details, market segment details and income of the clients were not mentioned
3.	Bhanwarlal Paliwal	Introducer details of the client, occupation, education, demat account details, income of the clients, broking activities details, market segment details, place and date of signing KYC were not mentioned
4.	Alpesh G Dand	Income tax/ PAN number, introducer details,

		demat details were not mentioned.
5.	Manisha Mardia	Occupation & education details, introducer details were not mentioned

Further as detailed above Noticee could not produce the KYC of its other client Dilip Rathore before the IA and also before the undersigned. Vide supplementary SCN dated July 7, 2011 Noticee was provided with the instances of aforesaid discrepancies which was acknowledged by the Noticee. However, Noticee did not file reply in this regard inspite of repeated reminders. Hence, I consider that Noticee by not submitting reply to the supplementary SCN dated July 7, 2011 has accepted their default in committing their duty as a broker. Noticee has thus failed in exercising due care, skill and diligence.

(v) Now coming to the role of the broker with respect to the instant case I note that Noticee's clients as per their KYC and other details are seen to be scattered all over India as per their addresses, however, all the orders were seen to be placed at and converging on one single terminal located at Bandra office. I do not see any reason why all orders flows of the clients should be to only one terminal, it is not a fact that this is so in one or two isolated cases, but in all the orders for all these clients the flow has converged only on one terminal. It is also not a fact that the broker has only one terminal and thus it would be logical to presume all orders will flow only to that one terminal, however it is not so.

(w) Noticee submitted that all the clients used to place orders by telephone. There is admittedly no dispute on this point. Now coming to the observation made above about the trades being executed only on one terminal of the broker in an office in Bandra from clients located in multiple locations. While trying to build up the scenario in the matter, the position comes out as this - that multi location clients are calling in at around the same time in the same office, for transactions only in one scrip within a span of minutes. It would be logical to presume that any reasonable broker would have systems in place that would alert it about such

order flows coming thick and fast in one scrip from a group of clients especially when they are coming to one single terminal.

(x) Noticee in its reply has cited the cases of SMC Global vs. SEBI, Networth vs SEBI and Saroj and Co. vs SEBI which were appealed before Hon'ble SAT and referred to the observations of Hon'ble SAT wherein it stated that the broker need to have connection with the parties in crystallizing the trades in a fraudulent manner and need to have knowledge of the manipulative trades.

In the instant matter I observe the connection of broker with client as follows

- CEO knows Sunil Mehta who traded through the Noticee in other scrips.
- Fund flow was observed between Jitendra Jain and Noticee though he did not trade through the Noticee in the scrip of ASCL. Further analysis shows that the funds were transferred to the other clients of the Mehta Group who traded in the scrip of ASCL.
- There was no introducer for the clients of the Noticee as stated above.
- Further Noticee has not been able to provide any contract notes for the trades executed on behalf of its clients inspite of giving repeated reminders.
- Deliberately overlooked deficiencies in maintaining the KYC - the basic document which enables a broker to know the clients.
- The failure on the part of the Noticee to produce contract notes casts serious doubts on the stand taken by the Noticee that the trades were executed based on the instructions of the clients. If the trades were indeed on based on the instructions of the clients, as in normal trading, then as in normal cases, contracts notes would have been issued and duly acknowledged by the clients, whereas in this case there were no contract notes.
- As brought out above Noticee made payment to Jitendra Jain who did not trade through Noticee in the scrip of ASCL but traded through some other broker in the scrip of the company. Noticee was not able to give any plausible explanation to make payment to Jitendra. It may be mentioned that

Jitendra Jain was one of the entities of the Mehta group and had indulged in manipulation in the scrip of ACSL during the investigation period. Further Sunil Mehta was known to the CEO of the Noticee and Sunil Mehta was observed to be the main person who orchestrated to the whole manipulative scheme. These facts prove the connection of the Noticee with the clients and their awareness to the nature of the trades being executed for the clients.

From the forgoing it can be concluded that the Noticee was connected to the clients and willfully instrumental in executing trades which were manipulative and aided and abetted manipulative transactions in connivance with Sunil Mehta. The Noticee was observed to be the largest contributor of the volumes to the scrips.

(y) While assessing the role of the broker in this particular cases, I found serious doubts too glaring that the broker did not act in the capacity of a broker, ie the agent of the clients. Given the circumstances pointed out above I have come to the conclusion that the broker had not only displayed lack of caution, but had willfully suspended his due diligence requirements and has been a willful party to clients orchestrating the manipulation in the scrip as mentioned above. I have come to a conlcusion that without the willful participation of the Noticee as mentioned herein above, it would have been difficult for the clients in this case to perpetrate their modus operandi to fruition. Being a registered entity, the Noticee has responsibilities under the regulations to prevent any such acts that compromise the sanctity of the market mechanism, however, as shown in this case the act of the Noticee to go against this market mechanism to perpetrate this fraud is inexcusable.

25. I find that the trades as executed by the Noticee were not of one instance but such transactions were carried out over a period of time. It is pertinent to note that such trading patterns lead to price fluctuation and creates a false appearance of trading in securities market and thereby tending to mislead the gullible investors. I find that

during the investigation period there has been significant trade volumes (with daily average at 70,000 shares) in the scrip despite very low floating stock; which has come down to mere 14,392 shares at the end of September 2008 quarter. I find that at BSE the price of the scrip opened at ₹ 1,240.00 on October 10, 2008 while it closed at ₹ 1,101.55 on the same day. The closing price of the scrip on November 20, 2008 was ₹ 1306.15 (Close to close 18.57 % rise in 28 trading days). During the same period Sensex had fallen by 19.73 % (from 10,527.85 to 8,451.01). Subsequent to the investigation period the price had started to fall and closed at ₹ 905 on January 30, 2009. There was no price sensitive news/announcement which might have supported the price. Also the financial results of the company do not justify the price rise in the scrip of ASCL. The trading pattern not only created artificial volume but also helped in artificial price rise of the shares of ASCL. All these leads to the failure of the Noticee to exercise due care and diligence and willful participation of the Noticee with the connected entities to create artificial market and price rise in the scrip of ASCL. Hence the submissions made by the Noticee are not accepted.

26. In the light of the above transactions, it is established that the Noticee has violated Regulations 4(1), (2) (a), (b), (e) & (o) of PFUTP and Regulation 7 read with Clauses A(1), A(2), A(3) A(4) & A(5) of Code of Conduct for Stock Brokers as specified in Schedule II of the Broker Regulations.

27. The method and the manner in which the synchronized trades were executed are the most important factors to be considered in these circumstances. The motive, thereafter, automatically falls in line. Clearly in almost all the deals, the orders are placed so as to ensure a matching of the buy and the sell quantity and the buy and the sell price with the counter party, with whom a prior tacit understanding exists. The buy and the sell orders are placed at almost the same time between the counter party clients, with just a difference of a few seconds. This proximity in the inputting of orders at the same price and for the same quantity, results in getting them matched, such that there is almost perfect matching in all the trades, with all the

three parameters, viz., quantity, price and most importantly, the time required to conclude the trades, which to a large extent indicates synchronization in the logging in of the orders, albeit executed on the screen of the stock exchange. This is what has transpired in the present case. The matching of these trades was not noted in a solitary incident or two, instead, a large number of synchronized trades got matched regularly most of which were also reversed. It is my considered belief that frequency of such trades ensured consistent matching of the orders purely for the purpose of projection of the volumes of the shares of ASCL in a way that was not the market determined volumes, possibly to induce other persons to invest in the said scrip. The 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.

28. From the foregoing it can be seen that the Noticee by allowing the client to trade in the fashion as described above which led to manipulation of the market, cannot be absolved of the responsibility bestowed on him as a market intermediary to provide access to clients without conducting due diligence as required under the provisions of law. The basic duties of due diligence could be least expected from any market participant and the failure on the part of the Noticee in this basic duty has led to manipulation through synchronized, structured trades which were also found to be reversal in nature too among the Mehta Group entities. I find that the trades as executed in the trading accounts of Bharat C Jain, Meen Been, Dilip Rathore, Bhanwarlal, Alpesh Dand and Manisha Mardia were not of one instance but such transactions were carried out over a period of time.

29. Regulation 4(1) of PFUTP lays that no person shall indulge in a fraudulent or an unfair trade practice in securities. 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 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. Regulation 4(2)(e) lays down that any act or omission amounting to manipulation of the price of a security will amount to manipulation. Regulation 4(2)(o) prohibits encouraging the client by an intermediary to dealt in securities solely with the object of enhancing his brokerage or commission. Clauses A (1) to A (5) of Code of Conduct in the Brokers Regulations state that a broker shall maintain integrity, exercise due skill and care in his business and not indulge in manipulative, fraudulent or deceptive transactions with a view to distort market equilibrium or shall not create false market singly or in concert with others that leads to inference with fair and smooth functioning of the market. Furthermore, a broker shall abide by all the provisions and statutory requirements of the Act and rules.

30. I have noted the submissions made by the Noticee. I note that the Noticee has not substantiated its claim that they were in fact acting in the prudent manner. 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 ignorance and shrug off their responsibility as a broker. Therefore, I don't find the explanations of the Noticee satisfactory.

31. The next issue for consideration is as to what would be monetary penalty that can be imposed on the Noticee for violation of Regulation 4(1), 4(2), (a), (b), (e) and (o) of PFUTP Regulations, Regulation 7 read with Clauses A(1), A(2), A(3) A(4) & A(5) of Code of Conduct for Stock Brokers as specified in Schedule II of the Broker Regulations. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…".*

32. Thus, the aforesaid violations by the Noticee make him liable for penalty under Section 15HA and 15 HB of the SEBI Act, 1992 which read as follows:

"15HA** - **Penalty for fraudulent and unfair trade practices

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

15HB - Penalty for contravention where no separate penalty has been provided

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."

33. While determining the quantum of penalty under sections 15HA and 15HB , 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."

34. 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 broker/s. Suffice to state that keeping in mind the practices indulged in by the Noticee, gains per se were made by the Noticee in that it executed trades in the scrip in a manner meant to create artificial volumes and liquidity which is an important criterion, apart from price, capable of misleading the investors while making an investment decision. In fact, liquidity/volumes in particular scrip raise the issue of 'demand' in the securities market. Greater the liquidity, higher is the investors' attraction towards investing in that scrip. Hence, anyone could have been carried away by the unusual fluctuations in the volumes and been induced into investing in the said scrip. Besides, this kind of activity seriously affects the normal price discovery mechanism of the securities market. People who indulge in manipulative, fraudulent and deceptive transactions, or abet the carrying out of such transactions which are fraudulent and deceptive, should be suitably penalized for the said acts of omissions and commissions. With regard to repetitive nature, I find that there was substantial number of such trades repeated over a number of days during the investigation period. Hence the default was repetitive in nature.

ORDER

35. After taking into consideration all the facts and circumstances of the case, I impose a penalty of ₹.20,00,000 (Rupees Twenty Lakh only) under section 15HA and ₹.5,00,000 (Rupees Five lakh only) under 15HB of the SEBI Act, {i.e. a total penalty of ₹.25,00,000(Rupees Twenty Five lakh only)} on the Noticee which will be commensurate with the violations committed by them.

36. 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 Mr. Jeevan Sonparote, General Manager, Investigations Department, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

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

Date: **December 13, 2012** **BARNALI MUJHERJEE**

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