BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.: - SD/AO/01/2013]

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. S.P.J. Stock Brokers Pvt. Limited
PAN: AAHCS8124R

BRIEF FACTS OF THE CASE:

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') had initiated investigation in the scrip of M/s. Adani Exports Limited (hereinafter referred to as 'AEL'), a public company mainly traded on the Bombay Stock Exchange (hereinafter referred to as the 'BSE') and the National Stock Exchange (hereinafter referred to as 'NSE'), to examine the possibility of violation of provisions of various SEBI Regulations in respect of trading in the scrip for the period from between July 09, 2004 and January 14, 2005 (hereinafter referred to as the first period) and August 08, 2005 to September 09, 2005 (hereinafter referred to as the Second Period). The price of the scrip witnessed huge spurt in volumes and wide fluctuations in the price ranging from 481 to 756 (during pre split in first period) and from Rs. 64.35 to Rs. 74.20 (during the second period).

2. The role of the brokers and their clients who had traded in the scrip of AEL were scrutinized. It was alleged that through collusion with the brokers and other clients, certain entities transacted in the shares of AEL in such a

manner that led to creation of artificial volumes in the scrip and was designed to create a false market and distorted market equilibrium leading to spurt in the price of the scrip which did not have any correlation with the performance of the company.

3. It was alleged that one of the brokers, viz., M/s SPJ Stock Brokers Pvt. Ltd. (hereinafter referred to as **"the Noticee"**), trading on its own account violated the provisions of Regulations 4(1), 4(2)(a), (b), (e), (g) and (n) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 2003 (hereinafter referred to as **"PFUTP Regulations"**) and clauses A(1), A(2), A(3), A(4) and A(5) of the Code of Conduct as specified in the schedule II under Regulation 7 of the SEBI(Stock Brokers and Sub–Brokers) Regulations,1992 (hereinafter referred to as the **"Broker Regulations"**) and was therefore, liable for monetary penalty under section 15HA and 15HB of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**").

APPOINTMENT OF ADJUDICATING OFFICER:

4. Ms. Babita Rayudu was appointed as Adjudicating Officer vide order dated July 24, 2007 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 aforesaid alleged violations committed by the Noticee.

5. Subsequent to the transfer of Ms. Babita Rayudu, the undersigned was appointed as the Adjudicating Officer vide order dated November 23, 2007.

SHOW CAUSE NOTICE/REPLY/PERSONAL HEARING:

6. Accordingly, a notice to show cause dated June 23, 2008 under Rule 4 (1) of the Rules was issued to the Noticee asking it to show cause as to why

an enquiry should not be held against it in terms of Section 15I of the SEBI Act and penalty be not imposed under Section 15HA and 15HB of the SEBI Act for the alleged violation by it of the abovementioned provisions of the PFUTP Regulations and the Broker Regulations.

7. In response to the said notice to show cause (hereinafter referred to as the 'SCN'), the Noticee vide letter dated July 11, 2008 denied all allegations and stated that all the transactions executed by the Noticee were bonafide and no relationship has been established between the Noticee and any broker or client.

8. In the interest of natural justice and in order to conduct an inquiry as per rule 4 (3) of the Rules, the Noticee was granted as opportunity of personal hearing before me on February 2, 2008. The Noticee attended the hearing through it s authorized representatives and expressed its desire to opt for consent proceedings and the matter was kept in abeyance. Subsequently the application for consent proceedings was rejected and the undersigned was informed vide office note dated July 16, 2009 to continue the proceedings.

9. Accordingly, the Noticee was given another chance of hearing on July 30, 2010. The Noticee attended the said hearing through its authorized representatives (hereinafter referred to as the 'AR') and submitted that it conducted transactions in the nature of jobbing and dealers could have entered trades which matched. The Noticee did not have any intention of manipulation and was unaware of counter parties.

CONSIDERATION OF ISSUES AND FINDINGS:

10. I have carefully perused the charges against the Noticee mentioned in the SCN, the submissions of the Noticee and the documents available on record. The issues that arise for consideration in the present case are stated and determined, one by one, as follows:

- **Whether the Noticee has violated Regulation 4 (1) and 4 (2) (a), (b), (e),(g) and (n) of the PFUTP Regulations, 2003?**

11. Before proceeding to decide the above issue, it is important to have a look at the abovementioned provisions as they existed at the relevant time, which interalia are reproduced below.

"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;

…

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

…

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

…

(n) circular transactions in respect of a security entered into between intermediaries in order to increase commission to provide a false appearance of trading in such security or to inflate, depress or cause fluctuations in the price of such security;

12. As per the findings of the Investigation Report (hereinafter referred to as the 'Report') pertaining to the said investigation, the analysis of the price-volume data of the scrip of AEL for the period under investigation revealed that the price of the scrip had witnessed wide fluctuations in the price ranging from 481 to 756 (during pre split in first period) and from Rs. 64.35 to Rs. 74.20 (during the second period). It was observed that average volumes in the scrip witnessed significant rise during the investigation period.

13. During the course of the said investigation, it was observed that the Noticee was one of the brokers who had traded substantially in the scrip of AEL during the first and the second period on its own account. The Noticee, has allegedly executed synchronized trades for 77,99,480 shares of AEL during the first period. It is also alleged that the Noticee entered into synchronized trades from 15,93,280 shares during the second period. The Noticee was acting in as a part of a group which executed trades of 1,30,92,580 shares of which 1,30,66,084 shares were allegedly synchronized during the first period. Further, orders of 1,27,75,599 shares were placed with time difference of less than a minute with exactly same quantity and price. During the second period the said group allegedly executed trades for 30,06,399 shares amongst themselves of which trades for 29,97,000 were synchronized as order were placed with time difference of less than a minute with exactly same price and quantity. Further, the orders for 27,47,881 shares were placed with time difference of less than 10 seconds.

14. As stated earlier, it is alleged that the said trades were synchronized as the buy and sell orders were placed within time gap of 1 minute with negligible or no price difference. These trades were allegedly done with a view to increase the price of the scrip and create artificial volumes and consequently create artificial demand in the scrip. It is further alleged that the Noticee, by executing the said trades, had manipulated the scrip. This

allegation is substantiated by the fact that the Noticee was trading in huge volumes and was entering orders in synchronized manner. There has been negligible change in the beneficial ownership because of the trading done by the Noticee and the trading done by the Noticee has only contributed to the increase in the price and volume of the scrip of AEL. The orders placed by the Noticee used to be identical in terms of price and quantity and used to be placed with negligible price difference.

15. In order to determine whether the Noticee has executed these transactions with a fraudulent purpose, there are various factors which have to be considered. The Hon'ble SAT in the matter of *Ketan Parekh v. Securities and Exchange Board of India*, *Appeal no. 2 of 2004,* has held that

"…*Any transaction executed with the intention to defeat the market mechanism whether negotiated or not would be illegal. Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available.* ***The nature of the transaction executed, the frequency with which such transactions are undertaken, the value of the transactions, whether they involve circular trading and whether there is real change of beneficial ownership, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties****. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn."*

16. It is observed that the trading done by the Noticee was huge and it could not be coincidence that the orders entered by the Noticee would match with orders placed by the same group for such a huge quantity. The trading done by the said group was only 18.26% of the total volume in the scrip of AEL and yet majority of the orders entered by the Noticee matched with the orders of the said group. In this regard, the response of the Noticee, when asked to comment on the nature of trading carried out, was:

> *"We used to carry out transactions in the nature of jobbing and all these trades were also done as a part of jobbing done by us.* ***There could have been some sort of matching as the trades were being entered by the dealers.*** *However, we submit that we had no intention of manipulation and were unaware of counterparties."*

The proceedings of personal hearing were recorded before the Noticee and a copy of the same was duly delivered to the Noticee. It is observed from the above statement that the Noticee itself has accepted during the course of personal hearing that orders entered by the dealers could have matched. This admission of the Noticee coupled with the fact that for almost all trades of the Noticee the counterparties were from one group clearly shows that there was an understanding between the Noticee and other members of the said group. The Noticee had entered the orders with precise timing, quantity and price. Such preciseness could not be achieved unless there is an understanding between the Noticee and the counterparties. Therefore, the argument that the trades were based on mere co-incidence is not acceptable.

17. In view of the above observations, findings and material on record I conclude that the allegation of violation of Regulation 4 (1) and 4 (2) (a), (b),(e),(g) and (n) of the PFUTP Regulations, 2003 by the Noticee is proved.

- **Whether the Noticee has violated Regulation A(1), A(2), A(3), A(4) and A(5) of the Code of conduct as specified in the schedule II under Regulation 7 of the Broker Regulations ?**

18. Before proceeding to decide this issue, it is necessary to have a look at the abovementioned provisions, as they existed at the relevant time. The same are reproduced below:

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 stockbroker 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.

19. It is alleged that the Noticee had executed the said transactions on its own account. It is clear from the discussion in the foregoing paragraphs that the Noticee indulged in manipulative trading creating artificial volume. The Noticee is a registered broker and as a specialized intermediary a high standard of integrity is expected from the Noticee. The Noticee has miserably failed in executing its duties and has participated in creation of artificial volume by executing synchronized trades.

20. In view of the abovementioned observations and findings and all the material on record, I am of the opinion that the allegation of violation of Clauses A(1), A(2), A(3), A(4) and D(5) of the Code of conduct as specified in the schedule II under Regulation 7 of the Broker Regulations is proved.

LEVY OF PENALTY

21. 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…"*.

22. Thus, the violation of Regulations 4(1), 4(2)(a), (b), (e), (g) and (n) of PFUTP Regulations and clauses A(1), A(2), A(3), A(4) and A(5) of the Code of conduct as specified in the schedule II under Regulation 7 of the Broker Regulations by the Noticee, make it liable for penalty under section 15HA and 15 HB of SEBI Act, 1992 respectively which reads 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.

23. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under section 15 HA and 15 HB of the SEBI Act.

24. While determining the quantum of penalty under section 15HA, it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:-

*"**15J - Factors to be taken into account by the adjudicating officer***

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default."

25. In the present matter it is difficult to quantify the gain made by the Noticee or the loss caused to the investors. However, It is observed that the Noticee has deliberately entered into synchronized trading which has lead

to artificial volume creation and misled the investors and has lead to wrongful gains to the Noticee. Such manipulation has surely harmed the integrity of a fair and open market and has caused loss to the innocent investors.

ORDER

26. After taking into consideration all the facts and circumstances of the case, I hereby impose a penalty of ₹ 15,00,000/- (Rupees Fifteen Lakhs only) under section 15HA of SEBI Act on the Noticee for the violation of Regulations 4(1), 4(2)(a), (b), (e), (g) and (n) of PFUTP Regulations and ₹ 5,00,000/- (Rupees Five Lakh only) under section 15HB of SEBI Act on the Noticee for the violation of clauses A(1), A(2), A(3), A(4) and A(5) of the Code of conduct as specified in the schedule II under Regulation 7 of the Broker Regulations. The total penalty thus levied on the Noticee is ₹ 20,00,000/- (Rupees Twenty lakhs only). In my view, this penalty is commensurate with the violations committed by it.

27. 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 Division Chief, Investigation Department, ID-10, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

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

Date: **February 08, 2013** **Sandeep Deore**
Place: **Mumbai** **Adjudicating Officer**