BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 34 of 2013

Order Reserved On : 30.08.2013

Date of Decision : 13.09.2013

M/s Rajesh N. Jhaveri
Prop. Shri Gautam N. Jhaveri
410, Wallstreet-1,
Opp. Orient Club,
Ellisbridge,
Ahmedabad – 380 015. …Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …Respondent

Mr. Deepak Shah, Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Mihir Mody and Mr. Pratham Masurekar, Advocates for the Respondent.

CORAM : Justice J.P. Devadhar, Presiding Officer
Jog Singh, Member
A. S. Lamba, Member

Per : A.S. Lamba

1. Being aggrieved by order dated December 17, 2012 of Adjudicating Officer (AO) of SEBI in matter, namely, M/s. Rajesh N. Jhaveri, under Section 15 I of Securities and Exchange Board of India Act, 1992 read with Rule 5(1) of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, imposing monetary penalty of Rs. 3,00,000/- under Section 15 HA of SEBI Act, 1992 and penalty

of Rs. 50,000/- under Section 15 HB of SEBI Act, 1992, the Appellant M/s. Rajesh N. Jhaveri has preferred the present appeal.

2. Scrip of Aditya International Ltd ('AIL' for short) was taken up for investigation by Bombay Stock Exchange Ltd. ('BSE' for short) due to price rise of scrip during December 18, 2003 to February 13, 2004 and fall in price of scrip thereafter.

3. During the period from December 4, 2003 to June 1, 2004 ('Investigation Period' for short) price of scrip increased from Rs. 65 to reach a high of Rs. 307 on February 13, 2004 and thereafter fell to Rs. 25.70 on June 1, 2004. During entire investigation period, stock brokers, namely, ASE Capital Markets Ltd., Galaxy Broking Ltd. and Grishma Securities (P) Ltd. had major concentration of 46.12%, 18.73% and 14.97% in gross purchase respectively and 53.35%, 15.92% and 22.69% in net purchase respectively.

4. Securities and Exchange Board of India ('SEBI' for short) ordered an investigation to examine the motive behind ASE Capital Markets Ltd., Galaxy Broking Ltd. and Grishma Securities (P) Ltd. in heavily buying the scrip and whether there was any nexus between major buyer in scrip amongst themselves and / or with company / promoter and whether they had influenced price of scrip.

5. Mr. D. Ravi Kumar, Chief General Manager, was appointed as Adjudicating Officer (subsequent to transfer of previous AO), under Section 15 I of SEBI Act, 1992 read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 vide order dated December 10, 2008 to inquire into and adjudge under Sections

15HA and 15HB of the SEBI Act, violations of Regulations 4(1) and 4(2) (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ('PFUTP Regulations' for short) and violations of Clauses A(1), A(2), D(1), D(4), D(5) of Code of Conduct prescribed for Sub Brokers in Schedule II under Regulation 15 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 ('Sub Broker Regulations' for short) alleged to have been committed by M/s. Rajesh N. Jhaveri ('Appellant' for short) in respect of its dealings in the scrip of AIL.

6. A Show Cause Notice ('SCN') dated December 16, 2009 was served on Appellant, in terms of provisions of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 requiring Appellant to show cause as to why an inquiry should not be held against Appellant and why penalty, if any, not be imposed on Appellant under Section 15HA and 15HB of SEBI Act, 1992 for violation of Regulations 4(1) and 4(2) (e) of PFUTP Regulations and Clauses A(1), A(2), D(1), D(4), D(5) of Sub Broker Regulations.

7. In SCN, it was alleged on basis of findings of Investigation Report ('IR' for short) that Appellant during investigation period was involved in price manipulation in scrip of AIL in many instances by placing orders at prices higher than Last Traded Price ('LTP' for short) and had influenced price of scrip in multiple instances of new price discovery / first trades.

8. Appellant vide letter dated December 31, 2009 intimated about its wish to avail consent process. As per SEBI's internal guidelines, although Appellant was under consent, vide personal hearing notice dated September 13, 2010, it was granted an opportunity of hearing at SEBI Bhavan, Mumbai on

September 27, 2010 at 11.30 am and was advised to submit its reply to SCN on or before September 24, 2012. However, Appellant vide its letter dated September 20, 2010 informed that he is busy with Audit and filing of IT Return. Further, Appellant stated that consent application is not filed, it will submit same latest by October 7, 2010, Appellant requested to keep the matter in abeyance.

9. Appellant was granted another opportunity of hearing vide personal hearing notice dated January 11, 2011 at SEBI Bhavan, Mumbai on January 28, 2011. However, Appellant vide letter dated January 25, 2011 stated that proprietor Mr. Gautam N. Jhaveri of M/s. Rajesh N. Jhaveri has undergone heart by-pass surgery and was advised bed rest, therefore, Appellant needs additional time. Hearing notices dated February 3, 2011 and March 7, 2011 were served on Appellant granting further opportunities of hearing but Appellant failed to attend hearings without providing any reasons.

10. It is observed from records that Appellant's consent application was rejected and same was communicated to Appellant by letter dated February 24, 2012. In view of same, Appellant was granted another opportunity of hearing vide hearing notice dated February 28, 2012 to appear for hearing on March 21, 2012 and was also advised to submit reply to SCN on or before March 14, 2012, since Appellant had not submitted any reply to SCN till date.

11. Appellant vide its letter dated March 13, 2012 submitted its reply as follows:

> "The charge is baseless. The transaction is at market rate as per market mechanism. There is neither reversal of trade nor counter trade. The delivery was effected through demat account. If there is no concept of price being higher than LTP, there would be never new high and low price, which is daily feature in stock market. Therefore only because price

traded is higher than LTP, there is manipulation. Even Appellant's transactions in such instances are for less than 200 shares in the scrip, which can never influence market nor can it be alleged as manipulation.

The regulator put cap on high or low price within which scrips can be traded. Appellant trades were always within limits. Trade at new price level, per se, do not violate any law or rule.

During December 4, 2003 to February 13, 2004, Appellant's volume was just 38,695 shares. During February 16, 2004 to June 1, 2004 Appellant's transactions were just 4,13,829 shares. All shares were delivery based transactions at prevailing market price under market mechanism. There is neither reversal of trade nor counter trade. Thus there is no violation of any rules or regulations.

The Appellant has no relationship with Jhaveri Trading & Investment Pvt. Ltd. Shri. Gautam Jhaveri is proprietor of Appellant. Ms. Harsha Jhaveri is carrying on her independent transactions and is not under any entity's control.

The transactions were entered into without any knowledge as to who counter party is, since shares are traded as per market mechanism. Even delivery is effected through demat account and hence one does not know counter party. This proves that transactions were entered into, not to manipulate prices but under genuine belief about future of the company. The transactions were effected knowing that company is fundamentally strong. As per Appellant's information, when the company was delisted, even at that time exit options offered price was around Rs. 70 per share.

Appellant further submits that even as per SCN total transactions as per para 4 of notice were just 7,43,930 shares. This includes transactions of Jhaveri Trading & Investment Pvt. Ltd. and of Ms. Harsha Jhaveri. The transactions of Jhaveri Trading were to tune of 2,24,134 shares whereas Appellant's transactions were for approx. 2.90 Lakh shares. In case of similar notice issued to Jhaveri Trading & Investment Pvt. Ltd., Chief General Manager of Investigation Department has exonerated it and advised it to be careful in future."

12. Appellant was granted another opportunity of hearing vide personal hearing notice dated September 11, 2012 at SEBI Bhavan, Mumbai on October 5, 2012. Appellant's representative Mr. Deepak Shah, Advocate (hereinafter

referred to as 'AR') at time of hearing submitted that noticee's trades of 50-100 shares in scrip will not influence price of scrip and therefore noticee has not manipulated price of scrip during investigation period. AR submitted that all its trading in scrip was delivery based trading and in support of same, Appellant will submit its demat statement for investigation period. AR further submitted that since trading is for year 2003-04, Appellant will put its best effort to provide demat statement for investigation period. AR stated that it has no relation / connection with Jhaveri Trading & Investment Pvt. Ltd. and Ms. Harsha Jhaveri. AR undertook to submit additional reply within a week from date of hearing. Further, AR was also provided with relevant extracts of IR at time of hearing.

13. Appellant vide its letter dated October 15, 2012 submitted additional reply as follows:

> "Appellant has transacted in scrip on 12 occasions only and has taken delivery in all these transactions.
>
> If as per trade long, Appellant was instrumental in placing orders at prices higher than LTP, submits that if traded only in small quantity which does not affect price mechanism.
>
> During days, Appellant did not trade still there was price increase. For these price increases, at least Appellant is not responsible. On the contrary, when price was rising, Appellant was also lured to buy shares and ultimately incurred losses.
>
> It can be seen that, in between 09.12.2003 and 17.12.2003, though Appellant did not trade, still there was substantial price rise from Rs. 117 to Rs. 141. Similarly in between 24.12.2003 and 12.01.2004, price rise is from Rs. 147.5 to Rs. 183. As per statement in trade log furnished to Appellant, Appellant did not trade but still there is substantial price rise. Therefore, it cannot be conclusively said that Appellant was instrumental in price rise. At least it does not amount to price manipulation, so as to invoke PFUTP Regulations.

> Appellant also submitted it's demat statement which includes Appellant's transactions as well as transactions of Appellant's clients. Due to considerable lapse of time Appellant does not have its financial books available, so as to bifurcate exact transactions.
>
> As regards Appellant's relationship with Jhaveri Trading & Investment Pvt. Ltd., Appellant is neither director nor shareholder of the said company. Therefore, Appellant, Shri Gautam N. Jhaveri is proprietor. Earlier Appellant was a partnership firm of Shri J.K. Doshi and Shri Rajesh Jhaveri. After retirement of Shri Rajesh Jhaveri, Shri J.K. Doshi formed partnership with Shri Gautam N. Jhaveri, so first name has continued like M/s. Rajesh N. Jhaveri. After Shri J.K. Doshi retired, Shri Gautam N. Jhaveri became sole proprietor of Appellant. However, Shri Rajesh Jhaveri has no interest / claim in Appellate."

14. AO, after consideration of facts and circumstances of case and material made available on record, has considered issue in present matter whether Appellant during investigation period was involved in price manipulation in scrip of AIL by placing orders at prices higher than LTP and whether Appellant had influenced price scrip in multiple instances of new price discovery first trades.

15. AO has observed from IR that during period from December 2003 to January 2004, price of scrip increased from Rs. 68 to Rs. 293 in 2 months also observed that when price of scrip rose from Rs. 68 to Rs. 293, only 175 trades had taken place in these 2 months, of which Appellant was buying client in 23 trades. Thus, Appellant appeared in 13.14% of trades during period of price rise and IR further observes that total traded quantity during this period was only 15,413 shares out of which Appellant had traded for 1,745 shares which is 11.32% of the total traded quantity in the market.

16. LTP analysis of 175 trades shows that there were 55 instances of orders placed at higher than LTP. Of these 55 instances, Appellate appeared in 12 instances (21.8%). It is observed that Appellant had undertaken 23 trades in 2 months out of which in 12 instances Appellant had put orders at higher than LTP in the range of 0.52% to 8.33%. Thus, majority (52.17%) of Appellant's trades were higher than LTP.

17. Over here AO quotes order of Hon'ble Securities Appellate Tribunal in the matter of Shailesh Jain vs. SEBI decided on May 1, 2012:

> *"…The appellant's role has been one of conscious indulgence in manipulation of the trade in a crude and preplanned manner. The very fact that the appellant has placed orders above the last traded price when sell orders were available in the market at a lower price shows the intention behind the trade…"*

18. Further, on analysis of first trades of day during these 2 months of price rise, it was observed that of 24 days in which first trade was at higher than LTP, in 3 instances Appellant had appeared.

19. Appellant's argument that only because price traded is higher than LTP, there is no manipulation and even Appellant's transactions are for less than 200 shares which can never influence the market nor can it be alleged as manipulation may not be accepted in light of fact that scrip was illiquid and total traded volume on daily basis was observed to be only 50-100 shares on all days with singular trades on most days except on December 10, 2003. Thus, it is clear that there was very little trading interest in scrip. It is normal in securities market to sell scrip when higher price is offered to book profit but by purchasing shares at higher price than LTP in majority of its trades, Appellant had given wrong impression about liquidity of scrip in the market. It must not be forgotten that every trade establishes new price of scrip and Appellant

trading at higher than LTP resulted in price of scrip going up and was done with a view to set price or benchmark price at desired level and influence innocent / gullible investors.

20. In view of above facts and circumstances of case and also based on Hon'ble SAT order as quoted above, AO has concluded that Appellant indulged in fraudulent and unfair trade practice in scrip and has manipulated price in scrip of AIL. Therefore, Appellant has violated Regulations 4(1) and 4(2) (e) of PFUTP Regulations. Text of said provisions is as follows:-

> ***"PFUTP Regulations:***
>
> ***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:*
>
> *(e) any act or omission amounting to manipulation of the price of a security;*

21. AO had concluded, in view of aforesaid conclusion arrived at, it can be further held that Appellant has failed to adhere to Code of Conduct prescribed for Sub Brokers and has violated Clauses A(1), A(2), D(1), D(4), D(5) of the Code of Conduct prescribed for Sub Brokers in Schedule II under Regulation 15 of Sub Brokers Regulations. Text of said provisions is as follows:

> ***"Sub Brokers Regulations:***
>
> *Reg. 15* *The sub-broker holding a certificate shall at all times abide by the Code of Conduct as specified at Schedule II.*
>
> *A(1)* *Integrity: A sub-broker , shall maintain high standards of integrity, promptitude and fairness in the conduct of all investment business.*

A(2) *Exercise of due Skill and Care: A sub-broker, shall act with due skill, care and diligence in the conduct of all investment business.*

D(1) *General Conduct: A sub-broker shall not indulge in dishonourable, disgraceful or disorderly or improper conduct on the stock exchange nor shall he willfully obstruct the business of the stock exchange. He shall comply with the rules, bye-laws and regulations of the stock exchange.*

D(4) *Manipulation: A sub-broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumors with a view to distorting market equilibrium or making personal gains.*

D(5) *Malpractices: A sub-broker shall not create a false market either singly or in concert with others or indulge in any act detrimental to the public interest or which leads to interference with the fair and smooth functions of the market mechanism of the stock exchanges. A sub-broker shall not involve himself in excessive speculative business in the market beyond reasonable levels not commensurate with his financial soundness."*

22. The said violations attract penalty under Sections 15HA and 15HB of the SEBI Act which provides that:

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

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 this regard, provisions of Section 15J of the SEBI Act and Rule 5 of the Rules require that while adjudging quantum of penalty, adjudicating officer shall have due regard to 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;

24. It is noted that IR has not quantified profit / loss for nature of violations / transactions carried out by noticee and no quantifiable figures are made available on record to assess disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of fraudulent trade practice. In view of the abovementioned conclusion and after considering all factors mentioned under Section 15J of the SEBI Act, 1992, AO has impose penalty of Rs. 3,00,000/- (Rupees Three Lakh only) on Appellant under Section 15HA of SEBI Act, 1992 and a penalty of Rs. 50,000/- (Rupees Fifty Thousand Only) under Section 15HB of SEBI Act, 1992, which is considered appropriate by AO in facts and circumstances of case.

25. From submissions of Appellant and findings / conclusions of AO, the following is noticed:

(i) During the Investigation Period, price of scrip of AIL increased from Rs. 65 as on December 4, 2003 to high of Rs. 307 on February 13, 2004 and thereafter fell to Rs. 25.70 on June 1,

2004 and during investigation period three stock brokers, namely, ASE Capital Markets Ltd., Galaxy Broking Ltd. and Grishma Securities (P) Ltd. had concentration of 46.12%, 18.73% and 14.97% of gross purchase respectively, i.e., of 79.82% (or say 80%) of gross purchase during Investigating Period (IP) in gross purchase; which means that only 20% of purchases during IP was by others, which can be stated to be public. Here, it may be mentioned that ASE Capital Markets Ltd. dealt with M/s. Rajesh N. Jhaveri lent to what extent this was done is not clarified. Similarly, other stock brokers dealt on behalf on other clients, in the alleged manipulation of AIL scrip lent exact role has not been clarified. Similarly from figures of net purchase by these three entities during IP, this net purchase was 91.96 (or say 92%), which means that only 8% of net purchases were other, which can be public. At one point of time, after IR was available to SEBI, letter was issued by Manager, Investigation Department vide IVD/ID4/PKN/JKA/ 79519 /06 dated November 9, 2006, addressed to four, including M/s. Rajesh N. Jhaveri, that during the period December 4, 2003 to February 13, 2004, orders by these four entities addressed in letter, resulted into trades establishing prices at higher levels during IP and these four entities were buying, when promoters of the company were selling (para 4 of letter). However, the contention that promoters were selling was not found in SCN or in final order, at any stage. It seems that this was given up as not true and it can be concluded that sellers were “not promoters” and can be members of public at large. One Appellant has stated that all his trades

were at market price as per market mechanism, with no reversal of trade nor counter trade and that delivery was effected in every trade through demat account and if there is no concept of price being higher than LTP, there would never be new high on low price, a daily feature in stock market and that only because price traded is higher than LTP, there is manipulated, which cannot be sustained and that his transactions are less than 200 shares per trade, which can never influence market nor can lead to alleged manipulation.

(ii) Appellant has also stated that regulator puts cap on high or low price within which scrip can be traded and his trades in scrip were always within limits and hence trade at new price level, within cap, per se, do not violate any laws, rule and that his volume was just 38,695 shares during December 4, 2003 to February 13, 2004 when price was rising and from February 16, 2004 to June 1, 2004, his transactions were just 4,13,829 shares, when price was falling and that his transactions were without knowledge as to who counter-party was and delivery was effected through demat account and hence transactions were genuine and not to manipulate prices.

(iii) Appellant also stated that it had effected transactions in AIL scrip, learning that company is fundamentally strong since even at time of delisting, exist option was at Rs. 70 per share. This has been corroborated by investigation report of SEBI (page 52 of Memorandum of Appeal) to the effect that from unaudited

quarterly results for quarters end September 30, 2003, December 31, 2003, March 31, 2004 and June 30, 2004 vis-à-vis corresponding quarters of previous years, it was observed that there was significant rise in income from operations and net profit except for quarter ended June 30, 2004, where revenue from operations had fallen, but in March 2004 and June 2004, other income exceeded the income from operations. The company showed good performance during IP and also subsequent to IP. The increase in income has been on account of investment activities, i.e. dividend on shares and long term capital gains.

(iv) We are not going into other contentions of Appellant or of AO, which are to the effect that trade of Appellant was at higher than LTP and about instances when his trade was of nature of price discovery, number of such instances when his trade discovered new price or the number of shares traded, etc.; since these are established facts and not disputed by Appellant.

(v) One of the contentions of Appellant is worth mentioning where it is stated that total transactions, as per para 2 of SCN, was just 7,43,930 shares, which includes transactions of Jhaveri Trading & Investment Pvt. Ltd. and of Ms. Harsha Jhaveri. Transactions of Jhaveri Trading & Investment (P) Ltd., were 2.24 lac shares, and Appellate transactions were 2.90 lac shares and that Jhaveri Trading & Investment Pvt. Ltd. has already been exonerated and

advised to be careful in future by Chief General Manager, Investigation Department, SEBI.

(vi) AO has stated in para 17 of Adjudication Order that orders were placed at higher rate when shares were available in market at lower rates does not make economic sense. However, a perusal of other observations / remarks of AO states that trading volume was very low (on most days during IP it was less than 500 per days) and quite often the only trade of day, which was executed by Appellant, hence it is not known as to how learned AO states that shares were available in market at lower prices, since no record / material has been placed on record to prove this observation of AO.

(vii) Similarly, the observation of AO (in para 20 of adjudication order) – it is normal in securities market to sell scrip when higher price is offered to book profit and by purchasing shares at higher price than LTP in majority of its trades, Appellant has given wrong impression about liquidity of scrip in market. It must not be forgotten that every trade establishes new price of scrip and Appellant trading at higher than LTP resulted in price of scrip going up and was done with a view to set price on benchmark price at desired level and influence innocent / gullible investors. By purchasing at higher price in majority of its trade, Appellant had given the wrong impression about liquidity and price of scrip in the market. Therefore, price of the scrip was manipulated.

(viii) The above is based on so many wrong facts, since admittedly by AO himself 92% of net trades were three entities, who are part of proceedings here and hence only 8% of trade was with other parties. Hence the volumes / liquidity and prices were manipulated by Appellant to influence innocent / gullible investors is not correct, since overwhelmingly vast majority of trade of scrip was between three entities only, whose role is being investigating. Regarding liquidity of ill-liquid scrip, it may be pointed out that AO has himself said that in this case, price of scrip increased, without corresponding increases in volume, which was less 500 shares on almost all days of IP. Hence there was not enough liquidity and that setting high price of scrip increased liquidity is not borne out on facts and AO is contradicting himself. The advice of AO that it makes economic sense to buy cheap and sell costly, is repeated on so many places and by many experts, but it has to be borne in mind that buy/sell of all commodities (including securities) is a zero sum game i.e. when one makes money, someone else loses to the same extent and hence howsoever clever you may be or follow any mantra, everyone ends up making money in some cases and loosing money in other cases, unless some people are able to manipulate scrip/ markets so that they only win and others only loose. It may however be pointed out here that all players in security market make money or lose money, on an average, if market as a whole goes up or down, but individuals making money or losing in particular trade depends on his instincts, his study of market, his

vision of particular scrip coming true / not true and on so many factors.

(ix) It has also been pointed out by Appellant that they traded 2.90 lakh shares in the scrip during IP, whereas Jhaveri Trading & Investment Pvt. Ltd. traded 2.24 shares in IP and were also trading at prices higher than LTP on a few occasions, but this entity has been let off with advise – To be more careful in future at investigating stage. If this is true, then it is a serious matter, since two entities, namely, M/s. Rajesh N. Jhaveri and Jhaveri Trading & Investment (P) Ltd. did the same, though to little lesser or greater extent, but one was let off during investigation, while other was served SCN and held guilty of manipulating security market. This is case of pure and simple discrimination. It cannot be justified by learned AO that one was let off by one department, while other was charged by another department. It has to borne in mind that SEBI is one entity, though has so many departments and if two department act differently in similar circumstances, then SEBI has to answer for discrimination against one and favoritism to other.

(x) As has been stated earlier, it was in IR that a few entities were purchasing the scrip, in question, at price higher than LTP and seller in all cases was promoter. This finding of IR has not been followed and if this investigation had been followed up properly, probably firm motive to alleged manipulation of market could have been found, but as stated this lead had not been followed

and hence investigation does not bring out any motive or establish manipulation of market, but investigation brings about some trades, which appear manipulative, but fail to establishment any violation in clear terms or of preponderance of probability heavily in favour of manipulation of market, to form any definite opinion in the matter. Last, but not the least, it is seen that during investigation of scrip of AIL, SEBI issued letter dated November 9, 2006 to four entities, out of which three namely M/s. Rajesh N. Jhaveri (traded on his own account) and Jhaveri Trading & Investment (P) Ltd., Harsha Rajesh Jhaveri and Gautambhai N. Jhaveri (traded through Rajesh N. Jhaveri and Grishma Securities (P) Ltd.) were found to have traded heavily in purchase of scrip of AIL during IP by purchasing 7,43,930 shares and selling 1,62,711 shares. However, it is learnt that Jhaveri Trading & Investment (P) Ltd. was let off with caution at investigation stage, but what happened to Harsha Rajesh Jhaveri and Gautambhai N. Jhaveri, who traded through M/s. Rajesh N. Jhaveri and Grishma Securities (P) Ltd. is not known.

(xi) In view, it is seen that contention of Appellant that it traded in scrip of AIL, who is his proprietary account, by purchasing same at above LTP, in genuine belief that scrip was fundamentally strong and had good / genuine investment plan, was doing well going by its financial results and price of scrip will go still high than price paid by it, appears to be the correct state of affairs. This is further supported by fact that trades were as per market rate as per market mechanism, within limits of high and low as

decided by market regulator, price was paid, delivery taken, no circular or self-trade was involved. Price went up even when Appellant was not trading, no relation between various players who were pushing up price of scrip could be found and who the counter-party to purchase by Appellant was not known, since transactions were on market and screen based. SEBI has not been able to bring about any concrete proof in support of their contention that Appellant actions resulted in manipulation of market but their case was diluted, to quite an extent, when a similarly placed entity viz. Jhaveri Trading and Investment (P) Ltd. was let off at investigation stage with caution and another two investigated for being major players in total net purchase during IP, but what action was taken against them is not known. Similarly, the lead in IR that seller was promoter has not been followed, for reasons best known to SEBI.

(xii) For alleged violation of sub-brokers code by Appellant, the matter has been dealt in para 25 of impugned order, wherein, it is stated that Appellant has failed to adhere to Code of Conduct prescribed for Sub-broker and has violated A(1), A(2), D(1), D(4), D(5) of the Code prescribed for Sub-brokers in Schedule II under Regulation 15 of Sub-broker Regulations. Since none of charges against Appellant such as manipulation of market under PFUTP Regulations 2003 or of SEBI Act, 1992, has been found to be true; it is held that allegations against Appellant for violation of Code of Conduct prescribed for Sub-brokers, are not substantiated.

(xiii) It is also mentioned that entire proceedings of SEBI are wrapped confusion, since investigation report at pages 51-57 of Memorandum of Appeal conclude that M/s. Rajesh Jhaveri and Saumil Bhavnagri were observed to be the major trades in the market and contributed significantly to rise in price of scrip. They were trading through M/s. Rajesh Jhaveri and Rajendra J. Shah respectively, sub-broker of ASE Capital Market Ltd. and broker of ASE. No date on IR could be seen.

(xiv) Thereafter, letters are issued to M/s. Rajesh N. Jhaveri, Jhaveri Trading & Investment (P) Ltd., Harsha Rajesh Jhaveri and Gautam N. Jhaveri, asking them to explain their relationship to company / directors and furnish information, document like whether still holding shares of the company, demat statement IP and details of off market transactions etc.

(xv) When IR was showing M/s. Rajesh Jhaveri and Saumal Bhavnagri as major traders in scrip of company without mentioning any other name, trading through M/s. Rajesh Jhaveri and Rajendra J. Shah, why this information was sought from Jhaveri Trading & Investment, Harsha Rajesh Jhaveri and Gautam N. Jhaveri and not from Saumal Bhavnagri, although it is seen that Saumal Bhavnagri has been punished in this instant case.

(xvi) Similarly, learned AO while passing orders, in para 2, role of Galaxy Broking Ltd. and Grishma Securities (P) Ltd. has been brought without mentioning, whether their role is context to their

own proprietary trades or on behalf of their clients, and is with lot of difficulty it can be inferred that they were dealing with their clients and it is clients role that is being investigated. Learned AO is advised to be more careful in clarifying issues, entities, their role in proceedings, the charges, their acts, etc. for clarification and easy appreciation of facts and evidence.

26. Hence, in totality of circumstances and in interest of justice and equity, it is held that no case of violation of SEBI Act, PFUTP Regulations 2003 and of Sub-brokers Regulations or Code of Conduct prescribed for Sub-brokers exists and accordingly appeal is allowed, impugned order quashed with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
A.S. Lamba
Member

13.09.2013
Prepared and compared by:
msb