BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Date of Order Reserved: 3.9.2013
Date of Decision: 25.9.2013

Appeal No. 226 of 2012

Mr. Dhirendra Rajitram Shukla
18A, Madhukunj,
2nd Floor, Malavi Road, Vile Parle (East)
Mumbai – 400 057. …… Appellant

Versus

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

Mr. J.J. Bhatt, Advocate with Ms. Rinku Valanju and Ms. Urmila Thakar, Advocates for the Appellants.

Mr. Kumar Desai, Advocate with Mr. Mihir Mody, Advocate 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 of Adjudicating Officer, Securities and Exchange Board of India, this appeal has been preferred by Mr. Dhirendra Rajitram Shukla (hereinafter referred to as "Appellant") under section 15(T) of the SEBI Act, 1992 ("SEBI Act") against order dated 28.9.2012 ("Impugned order"), imposing penalty of ` 40,00,000/- under section 15 HA of SEBI Act on appellant for violation of Regulation 4(2)(e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003.

2. Aesthetic Investments Limited was incorporated on August 17, 1982 as a limited liability company with the object of Investment & Finance. Subsequently, the name was changed to M/s Axon Infotech Ltd. (hereinafter referred to as 'AXON' or 'the company' or 'Axon') on November 05, 1999 to diversify into Information & Technology and Software Development Business. AXON has its registered corporate office at Mumbai and shares of AXON are listed on the Bombay Stock Exchange Ltd. (hereinafter referred to as 'BSE'). Authorized share capital of the company was Rs. 1,00,00,000 divided into 10,00,000 equity shares of Rs. 10/-each. The issued, subscribed and paid up capital share capital is Rs. 66,00,000 divided into 6,60,000 equity shares of Rs.10/-each, fully paid up. AXON came up with bonus issue of 3:1 on November 15, 2007. The total paid up equity share capital as of now is Rs.2,64,00,000 with face value of Rs.10. The scrip was moved to trade to trade segment by BSE w.e.f. July 28, 2006. Mr. Dhirendra Rajiratnam Shukla alias Dhiren Shukla, Mr. Govind Sharma and Mr. Pradeep Dhanuka were acting as directors for AXON and Mr. Dhiren Shukla was promoter of AXON during period of investigation.

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

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

5. Based on observations made by BSE, SEBI had conducted an investigation in scrip of AXON for suspected violation of price manipulation, Insider trading, takeover code and technical violations for period from March 17, 2006 to September 19, 2006, which was taken up as period of investigation [hereinafter referred to as 'exchange examination period'].

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

7. A show cause notice dated February 5, 2010 (hereinafter referred to as 'SCN') under Rule 4 of the SEBI (Procedure for holding inquiry and imposing penalties by Adjudicating Officer) Rules, 1995, was issued to Appellant asking him to show cause as to why an enquiry should not be held against him and why penalty, as prescribed, should not be imposed on under Section 15HA of SEBI Act for alleged violations of provisions of Regulation 4(2) (e) of PFUTP Regulations.

8. Reply of Appellant

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

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

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

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

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

f) As per Appellant, true facts of case are that appellant was promoter/director of AIL at relevant time of investigation and resigned from post of Director of Kushal Software Limited on 29.06.2005.

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

h) Appellant has further submitted that he was not concerned with others involved in SCN who have acted on their own and for their own good reasons. He has no knowledge or any cause to doubt genuineness of trades of others for he was least interested in same.

i) Moreover, SEBI itself, vide para 6.5.16 of Investigation report has observed that no specific pattern or synchronized/orders/structured

trades or circular trades was observed during period of investigation.

9. The allegation against Appellant is that he had violated Regulation 4 (2) (e) of PFUTP Regulations. The text of this regulation is as follows:-

"4. Prohibition of manipulative, fraudulent and unfair trade practices

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-
(e) any act or omission amounting to manipulation of the price of a security;"

10. It was observed from Investigation report that appellant was promoter and director of AXON during period of investigation and was holding was 32% (2,11,200 shares) as on March 31, 2006.

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

12. Consideration of Evidence and Findings by Learned Adjudicating Officer

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

b) KUSHAL which was going to be amalgamated with AXON, and KUSHAL along with its various connected entities had dealt in scrip and had altogether purchased 67,527 shares (14.59% of total market volumes and 10.23% of total share capital) and sold 2,15,086 shares (46.84% of total market volume and 32.59% of the total share capital).

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

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

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

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

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

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

14. Details Pertaining to Amalgamation of KUSHAL with AXON

a) It was observed that KUSHAL (transferor company) is being amalgamated into AXON (transferee company) and proposed appointment date for same was fixed as April 01, 2006 or such date as the High Court at Bombay might direct.

b) From valuation report submitted by AXON for amalgamation, it was stated that for arriving at fair value of exchange in the amalgamation of KUSHAL with AXON, Underlying Asset approach (valued at historical cost) and Profit Earning Capacity Value Approach have been used and the Market Value Approach has not been considered.

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

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

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

a) Profit making track record for last 3 years

b) Minimum market capitalization

c) Dividend paying track record for last 3 years

15. Share Holding Pattern of AXON and KUSHAL

a) Promoters holding was 32% (2,11,200 shares) as on March 31, 2006 and all the shares were owned by Mr. Dhiren Shukla (promoter). Public share holding of 68% was dominated by Mr. Vijay Singh Mundhra, Ms. Sarita Mundhra, Mr. Kamal Singh Mundhra, Mr. Ajay Modi, KUSHAL, Mr. Ranju Mumdhra, Sushil Finance Consultants Ltd. and Mr. Tanvir Ali Khan. AXON was a closely held scrip with 6.89% of total share capiltal held by only 24 shareholders each holding more than 1%.It was observed that Mr. Dhiren Shukla sold off his entire stake in AXON i.e., 2,11,200 shares on April 04, 2006.

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

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

d) Shareholding pattern of KUSHAL, as on June 30, 2006, 24.38% of the equity was held by Tanu Healthcare Ltd, single largest shareholder. Other prominent share holders were VRP Financial Services Ltd (7.74%), Absolute Leasing & Finvest Pvt Ltd (4.62%), Samjhauta Mercantile Pvt Ltd (4.27%), Prahlad Rai Inani (4.18%), M/s Maximaa Systems Ltd (4.17%), Surface Finance Pvt Ltd (3.62%), Catstar Finance Pvt Ltd (3.29%), Pradeep Dhanuka (3.11%), Daisy Impex Pvt Ltd (3.07%) and Kushagra Software Ltd (3.03%).

16. Price Volume (PV) Data of AXON

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

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

b) Price of scrip fell from Rs.147 on February 22, to Rs.73 by March 17, 2006 and to low of Rs.48.10 (price fall of 67.3%) on July 12, 2006. Thereafter, price rose almost steadily to Rs.156.10 (price rise of 224.5%) by September 19, 2006.

17. Off-Market Transactions/Transfers

a) It was observed that numerous off market transactions/transfers took place during the period under investigation. Further, it was observed that various related/connected/associated entities had indulged in off market transactions/transfers among themselves.

b) It was mentioned in letter dated February 5,2009 of Mr. Dhiren Shukla that he sold 2,11,200 shares off market at Rs.2.00 per share when market price was Rs.67.20 and received cash for his medical expenses. He could have got the same amount by selling about 6300 shares on market at Rs.67.20 as comparable volumes were being traded in the market.

c) Off market transfers took place among Dhiren Shukla, Vikas Kadam, Sheetal Kadam, KUSHAL, Kushagra Software Ltd., Shreeji Herbal Ltd., and Handful Investrade Pvt Ltd., VRP Financial Services Pvt Ltd and Keystone Stock Finance P. Ltd.

d) It was found that the telephone number of AXON is registered under the name, Handful Investrade Pvt Ltd. for same address as that of AXON. Telephone number of KUSHAL, was registered under the name Mr. Giriraj Kishore Agarwal, for the same address as that of KUSHAL.

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

informed that Mr. Ravindra Bhaskar Deshmukh was placing orders on behalf of KUSHAL.

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

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

h) AXON and KUSHAL were clearly related as Mr. Dhiren Shukla, promoter and director of AXON acted as director of KUSHAL as observed form annual reports of KUSHAL for financial years 2004-05 and 2005-06. KUSHAL through email dated February 18, 2009 also submitted same. Another common director was Mr. Ravindra Bhaskar Deshmukh as observed from submissions made by AXON and KUSHAL and annual report of KUSHAL for financial years 2004-05, 2005-06 and 2006-07.

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

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

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

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

21. Trades were executed for 5,79,082 shares during entire period of investigation, of which 3,43,010 shares were traded during March 17, 2006 to July 12, 2006 and 1,19,697 shares were traded during July 13, 2006 to September 19, 2006. It would be pertinent to mention that the scrip was moved segment w.e.f July 28, 2006.

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

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

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

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

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

27. Entities, namely Kushal Software Ltd, Kushagra Software, Handful Investment (P) Ltd., Giriraj Agarwal, Giriraj Agarwal HUF, Shreeji Herbal, Sheetal Kadam, VRP Financial Services P. Ltd. who were all related contributed to price fall of Rs.107.30 (cumulative price fall with respect to previous traded price) during period from February 22, 2006 to July 12, 2006 and price rise of Rs.53.95 (cumulative price rise with respect to the previous traded price) for period from July 13, 2006 to September 19, 2006 by being on either sell side or buy side of the transactions that resulted in new prices. It may be observed that by creating selling pressure the group could lower price of scrip by Rs.67.70 (cumulative price fall with respect to the previous traded price) during period from

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

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

Analysis Of First Trades

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

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

30. For period July 13, 2006 to September 19, 2006 KSL and related entities entered into first trades on 25 days out of 33 trading days. On 13 instances group entities appeared on buy side, on 15 instances on sell side and out of same on 3 instances on both buy and sale sides. Overall during said period group entities traded on 27 days out of 33 trading days. On 3 instances mentioned, Ms. Sheetal Kadam acted as counter party to KSL and details of those trades are given below.

Trade Date	**Trade Time**	**Buy Member Code**	**Buy Client**	**Sell Member Code**	**Sell Client**	**Quantity**	**Price**
22-Aug-06	10:41:43	27	Kushal Software Ltd	767	01ROO8	50	96

25-Aug-06	14:30:01	446	Sheetal Kadam	27	Kushal Software Ltd	50	100.5
29-Aug-06	14:12:44	27	Kushal Software Ltd	446	Sheetal Kadam	50	105
30-Aug-06	13:54:50	27	Kushal Software Ltd	446	Sheetal Kadam	25	109

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

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

33. From above, it is clear that scrip was very illiquid with little demand in market. However, KSL placed buy orders for 25,797 shares with buy order price varying from Rs.73.55 to Rs.135 and sell orders for a mere 200 shares in total with sell order price ranging from Rs.70.2 to Rs.149 with average volume of 12 shares per sell order. Also, on many instances first trades happened in latter half of day due to lack of buy as well as sell orders indicating dearth of sellers and buyers. From shareholding pattern it could be observed that as on June 30, 2006, total number of share holders was 111 and it increased to 137 as on September 30, 2006 indicating that it was closely held scrip and lacked depth. From these facts it could be inferred that intention was to establish new higher price even though there was very little demand otherwise.

34. Said group of entities created buying pressure in scrip during period of price rise and also orders placed, trades executed by them influenced price of scrip significantly. Moreover, Mr. Dhiren Shukla provided shares to said group entities through off market transactions/transfers at very low rate (as submitted by him), enabling them to manipulate in scrip. Though VRP Financial Services Pvt. Ltd., Keystone Stock Finace P. Ltd., Kushagra Software Ltd., Handful Investrade Pvt.

Ltd., Shrreji Herbal Ltd. and Mr. Giriraj Kishor Agarwal were part of the group, but no involvement on their part in jacking up the price of scrip per-se was observed.

35. Possible reason for such manipulation of price of scrip of AXON might be to have better valuation for shareholders of KUSHAL. The same is elaborated through an example give below. As it could be seen KUSHAL and its related/connected/associated group entities would have been benefited greatly if the market price of AIL was high. Taking the swap ratio of 140 shares of AXON for 100 shares of KUSHAL and assuming that the price of each share of AXON is Rs.100, each share of KUSHAL would fetch a price of Rs.140 in the market. If the market price of AIL went up to Rs.200, each share of KUSHAL for the same asset value, would fetch a price of Rs.280 in the market. This incremental gain in value of shares of KUSHAL without any additional increase in asset value would have been possible, had amalgamation been successful, thus benefiting shareholders of KUSHAL. However, their motive was defeated with rejection of the proposal for amalgamation by internal committee of BSE on June 28, 2007.

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

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

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

39. KUSHAL, Kushagra Software Ltd., Shreeji Herbal Ltd., Handful Investrade Pvt. Ltd in their replies stated that shares were bought at Rs.2.50 per share by paying in cash, but no proofs of consideration paid/received were submitted by any of concerned entities except KUSHAL.

40. It was observed that appellant while doing aforesaid deal of 2,11, 200 shares at price of Rs. 2.00 /- per share when market price was Rs. 67.20 /- has involved in act of manipulation of price of AXON which is violation of provisions of Regulation 4(2)(e) of PFUTP Regulations."

ANALYSIS OF FINDINGS OF ADJUDICATING OFFICER

41. The first finding of adjudicating officer that appellant sold his holding of 32 per cent of AXON, i.e. 2,11,200 shares at ` 2 each, when market price was ` 67.20 to Rs.70.55 per share, to related/connected/associated entities to AXON and/or KUSHAL, Appellant was involved in act of manipulation of price of AXON, which is violation of provisions of Regulation 4(2)(e) of PFUTP Regulation, as against appellant's contention that since he did not have de-mat account at time of sale of his shares in AXON on 3/4 April, 2006 and that he needed money for meeting emergency expenses of his accident and hospitalization and scrip of AXON was illiquid; he sold his shares in AXON in off-market transactions at ` 2 per shares.

42. Although this Tribunal need not say anything on sale of shares by appellant in off market transactions, at prices much below market price, yet the reasons/justification for this off-market sale due to requirement of funds to meet hospital expenses of appellant does not appear plausible, since these expenses were small and sale of so many shares was not proportionate. However, the conclusion of Adjudicating Officer that this off-market transaction was act of manipulation of price of AXON, will be discussed later.

43. During exchange examination period (March 17, 2006 to September 19, 2006), price of AXON decreased from ` 73.00 (March 17, 2006) to ` 49.45/- (July 03, 2006) and thereafter increased to ` 156.00 (September 12, 2006).

44. KUSHAL had purchased 67,527 shares (14.59 percent of total market volume) and sold 2,15,086 shares (46.84 percent of total market volume), period for this transaction not specified, but let us presume it was during exchange investigation period only and KUSHAL has been held responsible for Rs.38.2, of total price fall of Rs.97.55during the period from February 22, 2006 to July 03, 2006 and for Rs.33.10, of total rise in price of Rs.96.75 during July 19, 2006 to September 12, 2006.

45. From above para, two points need consideration. Exchange Examination Period is March 17, 2006 to September 19, 2006, during which sale and purchase of shares of AXON by KUSHAL are given, when total price fall is stated to be Rs.23.55 (March 17, 2006 to July 03, 2006) and total price rise is Rs.106.55 (July 19, 2006 to September 12, 2006). It is not clear to why price fall, is calculated from February 22, 2006 to July 03, 2006, when Exchange Examination Period was March 17, 2006 to September 19, 2006, specially when market price of AXON scrip as on February 22, 2006 has not been specified and why calculations not confined to Examination Period and why price of scrip has been examined from February 22, 2006.

46. It may be mentioned KUSHAL purchased 67,527 and sold 2,15,086 shares, which are higher than 30,000 acquired by KUSHAL from appellant, especially sale is more than 7 times the acquisition from appellant. Hence, how the charge that appellant's sale of shares to KUSHAL, was used in manipulation of price of scrip AXON, is not understood.

47. Thereafter learned Adjudicating officer has dwelled at length about Corporate News/Announcements regarding amalgamation of KUSHAL with AXON various steps in that direction and rejection of this proposal by BSE and

grounds for rejection etc. Nothing has been stated from paras 19 to 21 about charge of violation of Regulation 4(2)(e) of PFUTP Regulations, and these paras deal only with amalgamation.

48. Para 22 of Impugned Order deals with shareholding pattern of AXON and KUSHAL, in which change in shareholding pattern of AXON due to sale of 32 percent of holding by appellants on 3/4 April, 2006 to relating entities, has been stated and it is concluded that 86.89 percent of share capital of AXON is held by 24 shareholders, each holding more than one percent and KUSHAL was directly holding 3.22 percent of share capital of AXON. Similarly shareholding pattern of KUSHAL has been stated with 11 holders, holding more than 3.03 percent of holding, being named.

49. Para 23 of Impugned Order describes Price Volume Date of AXON from February 22, 2006 to July 12, 2006 and from July 13, 2006 to September 19, 2006 has been stated as being Rs.147 as on February 22, 2006 to low of Rs.48.10 on July 12, 2006 and rising to Rs.156.10 by September, 2006. Here again it is seen PV data pertains to period starting from February 22, 2006 and not March 17, 2006 (date for start of study of Exchange Examination Period), without stating any reason for starting this period from February 22, 2006 and not March 17, 2006. Here, again, it is noticed that exchange examination period has been broken from February 22. 2006 to July 12, 2006 as period of fall of price of scrip and July 13, 2006 to September 19, 2006, as period of rise of scrip, as against period from March 17, 2006 to July 03, 2006, as fall in price and July 04, 2006 to September 19, 2006, as period of rise of scrip. Reason for this not clarified or stated. Fall and Rise of SENSES and IT index of BSE from February 22, 2006 to September 18, 2006 is also given, but without relating same to fall and rise of AXON scrip.

50. Para 24 of Impugned Order deal with off market transactions in tabular form and deal with reasons given by appellant for sale of shares at Rs.2 per share

in off-market transactions and has been dealt in paras above. Relation between various entities on purchase side of off market transactions and relation between them, establishing that these parties are related/connected/associated entities to AXON and KUSHAL.

51. Paras 25 & 26 of Impugned Order deal with Trade Log, order Log Analysis and main conclusions for same are:

> Para 25(a) deals with buy orders exceeding sale orders in two scenarios, when price of scrip came down and also when price of scrip, when it increased. In both the scenarios buying pressure was created, by placing buy order in excess of sale orders, to increase price of scrip; but in one scenario, price of scrip came down and in second scenario price of scrip increased.
>
> Para 25(b) & (c) deals with brokers, with buy orders and sell orders respectively, but what is the relevance of these paragraphs, is difficult to understand. Para 25(d) deals with share bought and sold during certain periods, with remark that scrip moved to trade segment with effect from July 28, 2006. How related to case, not understood.
>
> Para 25(e) deals with trade of brokers, mentioned in para 25(b) & (c), but how this trade is related to entities mentioned in investigation, is not stated and also why trade by brokers members is relevant to case, is also not stated.
>
> Para 25(f) again deals with buy orders exceeding sale orders with time periods, but why this is relevant or important to case, is not stated.
>
> Para 25(g) after all this deals with entities with buy orders and sell orders during July 13, 2006 to September 19, 2006 with same number of shares in buy and sale orders.
>
> Para 25(h) again states actual share sale, no purchase valid buy orders with period, without stating why this is stated.
>
> Para 25(i) "Group" placing buy orders much exceeding sale orders, actual purchase, along with total marking volume of scrip and price of scrip increasing from Rs.66.75 to Rs.149 during July 19, 2006 to September 19, 2006. Singular trades and number these trades by group entities also mentioned; but relevance of this on "matter" under consideration, not stated.
>
> Para 26(b) deals with LTP analysis of all trades, including first trade, for investigation period with entities contributing to price fall of Rs.107.30 from February 22, 2006 to July 12, 2006 and price rise of Rs.53.95 for July 13, 2006 to September 19, 2006.

Para 26 (c) states that group entities contributed to price fall of Rs.22.25 during first period and price rise of Rs.13.00 during second period, by trading amongst themselves.

Para 26(d) gives analysis of first trades, which states that KSL and related entities entered into first trades on 18 days, out of 30 for period March 17, 2006 to July 12, 2006, but no consistent pattern of trading by related entities was observed.

Para 26(f) gives first trade results from period July 13, 2006 to September 19, 2006, gives number of days these entities did first trade, on buy side and sale side etc., but no inference from such first trade is drawn.

Para 26(g) gives days of singular trade in July 31, 2006 to September 19, 2006, but with no inferences.

Para 26(h) again scrips trades are given and that scrip lacked depth till company announced approval of amalgamation to BSE and volume of trade of scrip and price increased, but this is contradicted in later half of the para that except for 4 trades for which volume increased to 10,790 shares, average trade volume was 23 shares per trade and 36 shares per day and that scrip was traded only on four days for the month of April and on three days during May.

Para 26(i) scrip was illiquid with little demand in market with instances of volume of trade in scrip, but it is also stated that KUSHAL placed buy orders for 25,797 shares at order price varying from Rs.73.55 to Rs.135 and also sale orders for only 200 shares, with sale price ranging from Rs.70.2 to Rs.149, with average volume of 12 share per sell order. During period from June 30, 2006 to September, number of shareholders of AXON increased from 111 to 137, indicating scrip lacked depth and was closely held. However, it is inferred that intention was to establish new higher price, even though demand for scrip was very less.

Para 26(j) states that group entities created buying pressure in scrip during period of price rise and placed orders, and trades executed influenced price of scrip significantly. Dhiren Shukla provided shares to group entities through off market/ transfers at very low rate, enabling them to manipulate in scrip.

Para 26(k) is most important which gives “possible” reason for manipulation of scrip, which has been stated that it “might” be to have better valuation for shareholders of KUSHAL, since swap ratio between AXON and KSL had been decided and in case price of AXON goes up, KSL gets advantage of higher price of AXON. However, point to be noted here that it is “possible” reason for manipulation of AXON scrip by KSL and it means that Learned Adjudicating Officer is himself not reasonably convinced of this being the reason for manipulation.

Paras 26(j) to (p) deals with what has been stated earlier of about sale of share by AXON by Dhiren Shukla by off market transaction at low price to entities which are related/associated, rejecting reason for sale at low price and terming off-market transaction as attempt to

manipulate price of scrip to increase realization for KSL scrip, when merger of KSL into AXON taken place.

52. From an analysis of argument advanced by learned Adjudicating Officer in holding appellant, violating provisions of PFUTP Regulations, it is seen that :

(i) lot of attention is drawn to the fact that buy pressure was created to increase price of scrip, when buy orders exceeded or far exceeded sale orders; but it has not been explained (a) as to why price decreased in first phase of study, when buy pressure was created, and (b) why such a big issue of buy pressure has been created by giving so many instances of same, along with first trade, trade at increasing price; when scrip remained illiquid, lacked depth and remained closely held when number of major shareholders of AXON increased from 111 to only 137 and most of the trade was only amongst the related entities only. This leads to conclusion that public, at large, or investors were not lured to buy the AXON scrip at high prices, even though price of AXON scrip increased due to manipulations of group entities.

53. It has also been noted all the analysis of trade in AXON scrip, buy pressure being built, price being raised or made to fall, first trade, trading at higher price, trade by broker group, trade by related entities notably in two periods; has not been sufficient to prove any manipulation by appellant. The only act of manipulation is stated to be that of sale of shares by appellant in off market transaction at low rate to related entities, who utilized these shares, obtained at low price to manipulate price of scrip by creating buy pressure etc. but it is to be noted that learned Adjudicating Officer has himself concluded in para 26(k) is that it may be the “possible” reason and manipulation “might” have been done to have better valuation of KSL scrip, on its merger with AXON. Now when learned Adjudicating Officer is himself not convinced of reasons of act of manipulation why should appellant be punished for manipulation of

AXON scrip. On the basis of mere possibility of an event, which has not happened, cannot form the foundation of punishment.

54. Another important point to be noted that motion to effect merger of AXON and KSL was taken up in right earnest, but did not succeed since BSE did not approve the same. The acts by appellant to manipulate the scrip of AXON, can at best be called an "attempt" to do so, which did not succeed ultimately. Now whether learned Adjudicating Officer is justified in punishing appellant of manipulating scrip of AXON, when it was only an attempt and it did not succeed and whether attempt to manipulate, can be at par with act carried out and manipulate done. This Tribunal is of the considered view that attempt is not same as act completed and attempt only is not punishable, so long it does not succeeds and act is not carried out.

55. Based on mere possibility of reason of manipulation, it has been concluded by Learned Adjudicating Officer that off market deal by appellant of selling 2,11,200 shares at price of Rs.2 per share, when market price was Rs.67.20 per share, to related/connected/associated entities, quite a few of these who were not parties to possible manipulation of scrip of AXON, and learned Adjudicating Officer himself admitted that no firm conclusions from acts of KUSHAL and some associated entities, who indulged in trading of scrip, by creating false purchase/buy pressure by offering to buy a large number shares, but at the same time, placing very few sale orders, when not much volume of shares was traded, and not many new investors could be lured to buy AXON scrip (since only 26 new investors could be added), when prices were high and also when falsely creating buy pressure by placed much higher volume buy orders compared to very few sale orders, but price fell in first phase of investigation period even when buy pressure existed; by arbitrarily changing the exchange examination period; it has been conclusively proved to the satisfaction of learned Adjudicating Officer that sale of 2,11,200 shares of AXON scrip by

appellant at price of Rs.2 per share when market price was Rs.67.20 per share; appellant was responsible for manipulation of scrip of AXON by KSL trading and some connected/associated/related entities; and thereby hoping to getting higher price of KSL scrip when same is merged into AXON, since amalgamation of two had almost been approved, but did not go through fully since BSE did not approve the same.

56. This Tribunal has not been able to appreciate and hence accept the conclusions that scrip of AXON was manipulated by appellant and did harm to a large number of investors, who are not more than 26 in all.

57. It is seen that in adjudication order no.SKS/AO:01/2013, same learned Adjudicating Office has found appellant and related/connected/associated entities in this case, to be violating takeover regulations in order no.SKS/AO:01/2013, and facts of this case and case before us are the same. In other words appellant and connected/related/associated entities for same acts have been involved in two different cases and SEBI has spent twice the time of itself and of appellants and other entities twice; whereas the two cases could have been combined and dealt in totality and appellant/entities found violating takeover regulations and/or fraudulent activities, could have been dealt in one case; thus saving time of itself and of others, without prejudicing the interest of anyone. It is in interest of all concerned, including SEBI, not to fragment one act into different and deal them separately, resulting in wasting of time and energy of all concerned, when the matter can be deter dealt in one case in totality.

58. In the circumstances, the impugned order cannot be upheld and hence quashed. Appeal is allowed with no order as to costs.

Sd/-
Justice J. P. Devadhar
Presiding Officer

Sd/
Jog Singh
Member

Sd/-
A. S. Lamba
Member

25.9.2013
RHN