BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Order Reserved On: 8.10.2013
Date of Decision: 13.11.2013

Appeal No.33 of 2013

M/s. Triveni Management Consultancy Services Ltd.
Bandra Liberty Co-op Society Ltd., 1st Floor,
98-B, Hill Road, Bandra (West), Mumbai – 400050. …… Appellant

Versus

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

Mr. L.S. Shetty, Advocate with Mr. U. R. Naik and Ms. Manjiri Joshi, Advocates for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Mihir Mody and Mr. Pratham V. Masurekar, Advocates for the Respondent.

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

Per : A S Lamba, Member

1. The present appeal has been preferred by M/s. Triveni Management Consultancy Services Ltd. (hereinafter referred to as Triveni) against order no. BM/AO-70/2012 dated December 13, 2012 passed by Adjudicating Officer, Securities and Exchange Board of India (hereinafter referred to as "SEBI") under section 15T of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") and imposition of penalty of Rs. 20 lakh under section 15HA of SEBI Act for violating Regulations 4(1), 4(2), (a), (b), (e) and (o) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter

referred to as “PFUTP Regulations”) and Rs. 5 lakh under section 15HB of SEBI Act for violation of Regulation 7 read with clauses A(1), A(2), A(3), A(4) and A(5) of Code of Conduct for Stock Brokers as specified in Schedule II of Securities and Exchange Board of India (Stock Broker and Sub-Broker) Regulations, 1992 (hereinafter referred to as “Stock Brokers Regulations).

2. SEBI conducted investigation in trading in scrip of Asian Star Company Limited (hereinafter referred to as ASCL or company) for period October 10, 2008 to November 20, 2008) (hereinafter referred to as “Investigating Period” or “IP”). It was observed that during IP price of scrip went up from Rs.1240 on October 10, 2008 to Rs.1360.15 on November 20, 2008 (18.57 percent rise in 28 trading days), while SENSEX had fallen by 19.73 percent (i.e. from 10,572.85 to 8,451.01). Subsequent to IP, price of scrip started falling and closed at Rs.905 on January 30, 2009.

3. The role of brokers and their clients who traded in scrip of ASCL on BSE was scrutinized. It was observed during investigation that certain entities who were allegedly connected to each other had indulged in circular/reversal synchronized trading in such a manner that led to creation of artificial volumes in the scrip.

4. From trading pattern it was observed that there was concentration among major brokers and their clients in trade of ASCL scrip on BSE during period under examination. Analysis of trading pattern revealed that broker Triveni Management Consultancy Service (hereinafter referred to as “Appellant”) had maximum concentration in gross purchase at 26.25 % followed by broker BP Equities Pvt Ltd (hereinafter referred to as “BP Equities”), Swastika Investment Ltd (hereinafter referred to as "Swastika") and Emkay Global Financial Services Ltd (hereinafter referred to as "Emkay Global") at 19.27 %, 17.97 % and 16.97 % respectively. On gross sales also these brokers had same percentage of

concentration as all of them had sold entire or similar quantities of shares they had bought.

5. It was observed that group of entities allegedly connected to each other viz., Sandeep Jain, Jitendra Jain, Suresh Hanswal, Pradesh Nimawat, Sunil Mehta, Usha Mehta, Bharat C. Jain, Arun Manohar Sakpal, Narendra Sanghi, Meen Been Elastomers, Dilip Rathore, Bhanwar Lal Paliwal, Alpesh G Dand, Manisha Mardia, Rajnish Jain were found to be executing synchronized/ structured and reversal trades among themselves. These entities were found to be linked with each other through Sunil Mehta, Ajay Roongta, Manish Mathur and together formed a group which is henceforth referred as "Mehta Group**".** It was alleged that Appellant was advising clients to trade in scrip of ASCL and was placing orders, which were manipulative in nature, (synchronized, structured and reversal trades) in accounts of its clients and thus found to be actively aiding and abetting in alleged manipulative transactions in connivance with Sunil Mehta. Further, it was alleged that glaring mistakes were found in maintaining KYC forms by Appellant in respect of its clients. Appellant was thus, alleged to have failed to carry out its business with due, skill, care and due diligence and violated Regulation 4(1), (2) (a), (b), (e) & (o) of SEBI PFUTP Regulations, 2003 and Regulation 7 read with Clauses A(1), A(2), A(3) A(4) & A(5) of Code of Conduct for Stock Brokers as specified in Schedule II of SEBI Stock Brokers Regulations.

6. Show Cause Notice No. EAD-6/BM/VS/29351/2010 dated December 9, 2010 (hereinafter referred to as ‘SCN’) was issued to Appellant under rule 4 of Securities and Exchange Board of India (Procedure for Holding Enquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 to show cause as to why an inquiry should not be held and penalty be not imposed under section 15 HA and 15HB of SEBI Act for alleged violation specified in said SCN. Vide

letter dated February 18, 2011 Appellant filed detailed reply to SCN and denied all allegations leveled against him in SCN and inter alia submitted that:

a. We have always followed policy of trading as per the instructions given by our clients and have never taken investment decision on behalf of our clients. While permitting clients to trade, we decide on the exposure to be granted to each client on the basis of their previous trading history, the net worth of the client and the securities/cash available with us as margin. Some of our clients are day traders/jobbers and in their case since there is rarely any delivery, we closely monitor their trades to decide their exposure.

b. That SEBI has cherry picked the trades of only four clients and only those trades of even those four clients that support their theory of synchronized trading and ignored the remaining trades and trades of other clients. This is not a rational, scientific, logical or legally permitted method of drawing adverse findings against us and alleging fraud by us.

c. That the trading system of BSE and NSE are anonymous and automated, it is not possible for a broker or client to indentify counter parties while placing orders.

d. That SEBI ought to have established that there was some understanding between the parties to the trade to synchronize their orders in a malafide manner and that they in fact acted on such an understanding. No such finding is made in the said SCN.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. In interest of natural justice and in order to conduct an inquiry as per rule 4 (3) of Rules, Appellant was granted an opportunity of personal hearing on June 20, 2011, but Appellant finally appeared on June 21, 2011 through Auhorised Representatives Mr. Joby Mathew and Mr. Dinanath Dubey, and sought for cross-examination of Sunil Mehta, Jitendra Jain, Bharat C Jain, Ravindra Parekh of Meen been Elastomers Ltd., Dilip Rathore, Alpesh Dand, Amit Mardia on behalf of Manisha Mardia and Bhanwarlal Paliwal. Appellant was asked to submit written request received from Jitendra Jain for funding him and was further asked as to whether they were following such practice to fund their clients, if so, how many such instances where there and; advised to submit names of clients along with details of funds transferred to such clients. Appellant undertook to submit aforesaid details by June 30, 2011.

8. While the proceedings were in progress, Appellant was issued supplementary SCN dated July 7, 2011 wherein instances of discrepancies by Appellant in maintaining KYC forms of clients were provided to them and Appellant was advised to comment on same by July 15, 2011.

9. Vide reply dated October 8, 2012 Appellant made the following further submissions.

a. That we have been unable to trace all contract notes issued to the aforesaid clients; annexed hereto and marked as Annexure B are copies of the dispatched register and copies of proof of delivery slips received from our courier.

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

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

d. Jitendra Jain made an oral request for payout of Rs. 4,00,000 against a credit balance of Rs. 5,55,079.16 on March 25, 2009 and was given the same. The account remained un credit till it was closed on May 15, 2009 with a payout of Rs. 4,15,079.16. From the above it may be noted that payouts were made to Jitendra Jain when the account was in credit and when it was in debit. We had taken all due care to ensure that there was no margin shortfall in respect of the client's open F&O positions and only

then was payout given to the client. Our prudence is confirmed by the fact that the account came into credit within a short time and remained so until it was closed.

10. Vide email dated October 9, 2012 Appellant was informed that they have not submitted contract notes of their clients as SEBI (Stock Brokers & Sub-brokers) Regulations, 1992 requires contract notes to be maintained by broker for at least 5 years. Hence, copies of dispatch register and proof of delivery slips were not acceptable. Further Appellant was informed that no documentary proof of margin account of Jitendra Jain has been provided with reply. Appellant was asked to provide details of instances where they have adhered to oral requests of their clients and had made payments to them in excess of their credit balance along with name of clients, scrip in which they have traded and their ledger statements when such payments were made. Appellant was advised to provide aforesaid information/documents by October 12, 2012. It was noted by Adjudicating Officer that enough opportunity to submit requisite documents/information, reply to supplementary SCN dated July 7, 2011 and cross examine Mehta Group entities has been provided to Appellant and he failed to submit the same.

11. Issues for consideration against Appellant are as follows:

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

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

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

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

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

(a) indulging in an act which creates false or misleading appearance of trading in the securities market;
(b) dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss;
(c) ……
(d) ……
(e) any act or omission amounting to manipulation of the price of a security;
(f) ……
(o) encouraging the client by an intermediary to dealt in securities solely with the object of enhancing his brokerage or commission.

Stock-Brokers to abide by Code of Conduct.

7. The stock-broker holding a certificate shall at all times abide by the Code of Conduct as specified at Schedule II.

SCHEDULE II

Code of Conduct for Stock Brokers

A. GENERAL

(1) INTEGRITY: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.

(2) EXERCISE OF DUE SKILL AND CARE: A stock-broker, shall act with due skill, care and diligence in the conduct of all his business.

(3) MANIPULATION: A stock-broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains.

(4) MALPRACTICES: A stock-broker shall not create false market either singly or in concert with others or indulge in any act detrimental to the investors interest or which leads to interference with the fair and

smooth functioning of the market. A stock-broker shall not involve himself in excessive speculative business in the market beyond reasonable levels not commensurate with his financial soundness

(5) COMPLIANCE WITH STATUTORY REQUIREMENTS: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the stock exchange from time to time as may be applicable to him."

13. Upon careful perusal of material available on record, Adjudicating Officer finds role of Appellant in violations, as follows:

(a) Analysis of trading pattern revealed that Appellant had maximum concentration in gross purchase at 26.25 % followed by broker B P Equities Pvt. Ltd., Swastika Investment Ltd and Emkay Global Financial Services Ltd at 19.27 %, 17.97 % and 16.97 % respectively.

(b) As per trade and order log Bharat C Jain, Meen Been, Dilip Rathore, Bhanwarlal Paliwal, Alpesh Dand and Manisha Mardia traded through Appellant and together bought and sold 518285 shares, which constituted 26.25 percent of total trade volume, during IP.

(c) From trade and order log analysis it is noted that Bharat C Jain, Meen Been, Dilip Rathore, Bhanwarlal Paliwal, Alpesh Dand, Manisha Mardia,

Usha Mehta, Sunil Mehta, Sandeep Jain, Jitendra Jain, Suresh Hanswal, Pradesh Nimawat, Arun Manohar Sakpal, Narendra Sanghi and Rajnish Jain were found to be trading among themselves. These entities were found to be linked with each other through Sunil Mehta, Ajay Roongta, Manish Mathur and together formed "Mehta group".

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

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

(f) There was significant reversal of trades between above brokers trading for their clients that brokers were reversing almost all trades during same day and same was done with same counterparty brokers or any other out of above five brokers. Further, it is seen that trading volume was 19,74,219 shares, out of which 17,33,986 (87.83 percent of total volume) shares were part of synchronized trade and 8,87,424 (44.95 percent of total volume) were part of structured trade.

(g) Circular and reversal trades executed by Mehta group during the investigation and that appellant entered into trades for Bharat C Jain, Meen Been, Dilip Rathore, Bhanwarlal Paliwal, Alpesh Dand and Manisha Mardia which were in nature of circular and reversal. Such reversal trading was executed by Appellant from October 10, 2008 to November 20, 2008 and with Mehta group entities only. These trades led to manipulation of volume and influenced price of scrip.

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

(i) Bharat C Jain was client of Appellant who was found to have entered into synchronized and structured transaction with Sunil Mehta, Usha Mehta, Jitendra Jain, Sandeep Jain, Meen Been, Suresh Hanswal, Arun

Manohar Sakpal and Narendra Sanghi. Appellant on behalf of Bharat C Jain entered into 647 buy and 452 sell trades for 158802 shares and 156621 shares respectively during IP, which were as synchronized trades; and 176 buy and 223 sell orders for 60778 shares and 81596 shares respectively which were found to be structured with Mehta group. It was alleged in SCN that aforesaid synchronized and structured trades were placed through the Appellant. It may be noted that demand draft (DD No. 021533 of Rs.6,00,000 dated February 10, 2009) was issued by Jitendra Jain in Bharat C Jain's favour, and voucher to make demand draft was filled by Sunil Mehta who accepted same during investigation and demand draft was deposited in Bharat C Jain's bank account. This shows clear nexus between Bharat C Jain, Jitendra Jain and Sunil Mehta. The trades were being placed through Appellant who was found to be related to Sunil Mehta through its Chief Operating Officer, Manish Mathur.

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

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

(l) Alpesh Dand was client of Appellant who was found to have entered into synchronized and structured transaction with Sunil Mehta, Usha

Mehta, Jitendra Jain, Sandeep Jain, Suresh Hanswal, Arun Manohar Sakpal and Narendra Sanghi. Appellant on behalf of Alpesh Dand entered into 72 buy and 45 sell trades for 16174 shares and 16111 shares respectively during IP, which were synchronized trades with Mehta Group; and 25 buy and 27 sell orders for 9312 shares and 10761 shares respectively which were found to be structured with Mehta Group. Alpesh Dand has also submitted that he had asked Appellant to trade in ASCL till profit or loss position of Rs.1,50,000/- and it was Appellant who actually traded in shares in his account. Appellant was asked during proceedings to submit contract notes for trades executed on behalf of its clients, however Appellant failed to do so. Claim of Appellant that they were acting as per instructions of Alpesh Dand thus cannot be accepted as it cannot even produce bare minimum document in form of contract note which could have been an evidence to show that client placed order and Appellant executed trades as per client's instruction.

(m) Client Manisha Mardia entered into synchronized and structured transaction with Sunil Mehta, Usha Mehta, Jitendra Jain, Sandeep Jain and Pradesh Nimawat and Appellant on behalf of Manisha Mardia entered into 57 buy and 54 sell trades for 15317 shares and 15287 shares respectively during IP which was synchronized trades with Mehta Group; and 29 buy and 28 sell orders for 7112 shares and 7233 shares respectively which were found to be structured with Mehta Group. Amit Mardia authorized representative of Manisha Mardia has submitted before IA that Appellant used to give tips/ advice for trading in scrips and on their approval by clients Appellant used to trade in their account and decide time, price and quantity of all the orders. It was therefore alleged that Appellant traded in scrip of ASCL through trading account of Manisha Mardia and allegedly manipulate scrip. Appellant denied allegations of Amit Mardia and

submitted that they have traded on behalf of Manisha Mardia as per instructions given by her and her husband. However Appellant could not produce any document/ contract notes to support its claim.

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

and structured trades and contributed in manipulating scrip of the company.

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

(i) On September 13, 2008 Jitendra got Rs. 884500 vide cheque no 861556 from Appellant (though there was only Rs. 601224.28 credit in his ledger account) in his account no. 1821000069637. Out of abovementioned account Rs.200000 was withdrawn in cash and Rs.200000 and Rs.105000 was transferred to Anjana Mehta (wife of Sunil Mehta) and Sunil Mehta respectively on same day vide cheque no's. 867018 and 867017 respectively. Rs.380000 was returned back to Appellant on September 17, 2008 vide cheque no.867020.

(ii) On October 21, 2008 Jitendra got Rs.1000000/- vide cheque no 861580 from Appellant (though there was only Rs.148079.16 credit in his ledger account). Jitendra got another Rs.500000/- from Appellant (taking his account to further debit) on October 22, 2008 vide cheque no 861581. Amount of Rs.1000000/- was withdrawn in cash on October 21, 2008 itself. It was also observed that around same period on October 23, 2008 Rs.100000/- and on October 27, 2008 Rs. 800000/- cash was deposited in Sunil Mehta's account no 1821000057910 and on October 27, 2008 Rs.20000/- was deposited in account no 1191000085001 of Suresh Hanswal. Further cash Rs. 250000/- was withdrawn on October 22, 2008 while Rs.200000/- was deposited in account of Sunil Mehta on November 3, 2008. While on October 22, 2008 Rs. 250000/- was paid vide cheque no

953054 to Gopal Lal Mathur (father of Manish Mathur, CEO of Appellant, which was stated by him as loan taken from a client).

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

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

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

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

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

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

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

(t) Appellant in its reply has cited cases of SMC Global vs. SEBI, Networth vs SEBI and Saroj and Co. vs SEBI which were appealed before Hon'ble SAT and referred to observations of Hon'ble SAT wherein it stated that broker need to have connection with parties in crystallizing trades in a fraudulent manner and need to have knowledge of manipulative trades.

In the instant matter, the connection of broker with client is as follows

- CEO knows Sunil Mehta who traded through Appellant in other scrips.

- Flow of funds was observed between Jitendra Jain and Appellant though he did not trade through Appellant in scrip of ASCL. Further analysis shows that funds were transferred to other clients of Mehta Group who traded in scrip of ASCL.
- There was no introducer for clients of Appellant as stated above.
- Further Appellant has not been able to provide any contract notes for trades executed on behalf of its clients inspite of being reminded repeatedly.
- Deliberately overlooked deficiencies in maintaining KYC - basic document which enables a broker to know his clients.
- Failure on part of Appellant to produce contract notes casts serious doubts on stand taken by Appellant that trades were executed based on instructions of clients. If trades were indeed on based on instructions of clients, as in normal trading, then as in normal cases, contracts notes would have been issued and duly acknowledged by clients, whereas in this case there were no contract notes.
- As brought out above Appellant made payment to Jitendra Jain who did not trade through Appellant in the scrip of ASCL but traded through some other broker in scrip of ASCL. Appellant was not able to give any plausible explanation to make payment to Jitendra. It may be mentioned that Jitendra Jain was one of entities of Mehta group and had indulged in manipulation in scrip of ACSL during investigation period. Further Sunil Mehta was known to CEO of Appellant and Sunil Mehta was observed to be main person who orchestrated to whole manipulative scheme. These facts prove connection of Appellant with clients and their awareness to nature of trades being executed for its clients.

From forgoing it can be concluded that Appellant was connected to clients and willfully instrumental in executing trades which were manipulative and

aided and abetted manipulative transactions in connivance with Sunil Mehta. Appellant was observed to be largest contributor of volumes to scrip of ASCL.

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

14. Appellant executed these trades which were not of one instance but such transactions were carried out over a period of time. It is pertinent to note that such trading patterns lead to price fluctuation and created false appearance of trading in securities market and thereby tending to mislead gullible investors. It is seen find that during investigation period there has been significant trade volumes (with daily average at 70,000 shares) in scrip despite very low floating stock; which has come down to mere 14,392 shares at end of September 2008 quarter. The trading pattern not only created artificial volume but also helped in artificial price rise of shares of ASCL. This proves that Appellant failed to exercise care and due diligence and willful participated with connected entities to create artificial market and price rise in scrip of ASCL. Hence the submissions made by Appellant are not accepted.

15. Method and manner in which synchronized trades were executed are most important factors to be considered. Clearly in almost all deals, orders are placed so as to ensure matching of buy and sell quantity and buy and sell price with counter party, with whom prior tacit understanding existed. Buy and sell orders are placed at almost same time between counter party clients, with just difference of a few seconds. Matching of these trades was not noted in a solitary incident or two, instead, a large number of synchronized trades got matched regularly, most of which were also reversed. It is considered belief of Adjudicating Officer that frequency of such trades ensured consistent matching of the orders purely for purpose of projection of volumes of shares of ASCL in a way that was not market determined volumes, possibly to induce other persons to invest in said scrip. This Tribunal in Ketan Parekh Vs. Securities & Exchange Board of India (Appeal No. 2 of 2004) held that in order to find out whether a transaction has been executed with intention to manipulate market or defeat its mechanism will depend upon intention of parties which could be inferred from attending circumstances because direct evidence in such cases may not be available.

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

17. Regulation 4(1) of PFUTP lays that no person shall indulge in fraudulent or an unfair trade practice in securities. Regulation 4(2) (a) of PFUTP, prohibits a person from indulging in an act which creates false or misleading appearance of trading in securities market. Regulation 4(2)(b) of PFUTP prohibits dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in price of such security for wrongful gain or avoidance of loss. Regulation 4(2)(e) lays down that any act or omission amounting to manipulation of price of a security will amount to manipulation. Regulation 4(2)(o) prohibits encouraging client by an intermediary to dealt in securities solely with object of enhancing his brokerage or commission. Clauses A (1) to A (5) of Code of Conduct in Brokers Regulations state that a broker shall maintain integrity, exercise due skill and care in his business and not indulge in manipulative, fraudulent or deceptive transactions with a view to distort market equilibrium or shall not create false market singly or in concert with others that leads to inference with fair and smooth functioning of the market. Furthermore, a broker shall abide by all provisions and statutory requirements of SEBI Act and rules.

18. It is noted from submissions made by Appellant that Appellant has not substantiated its claim that they were in fact acting in the prudent manner. Appellant was expected to be diligent and use required skill and care while acting as a broker, in which Appellant has failed. Appellant cannot plead ignorance and shrug off its responsibility as a broker. Therefore, explanations of Appellant are not satisfactory.

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

20. Next issue for consideration is as to what would be monetary penalty that can be imposed on the Appellant for violation of Regulation 4(1), 4(2), (a), (b), (e) and (o) of PFUTP Regulations, Regulation 7 read with Clauses A(1), A(2), A(3) A(4) & A(5) of Code of Conduct for Stock Brokers as specified in Schedule II of the Broker Regulations. Hon'ble Supreme Court of India in 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…".

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

"15HA - Penalty for fraudulent and unfair trade practices

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

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

Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees."

22. While determining quantum of penalty under sections 15HA and 15HB, it is important to consider 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 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."

23. It is difficult, in cases of such nature, to quantify exactly disproportionate gains or unfair advantage enjoyed by an entity and consequent losses suffered by investors. It is noted that investigation report also does not dwell on extent of specific gains made by clients or broker/s. Suffice to state that keeping in mind practices indulged in by Appellant, gains per se were made by Appellant in that it executed trades in the scrip, in a manner meant to create artificial volumes and liquidity which is an important criterion, apart from price, capable of misleading investors while making investment decisions. In fact, liquidity/volumes in particular scrip raise issue of 'demand' in securities market, since greater liquidity, higher is investors' attraction towards investing in that scrip. Hence, anyone could have been carried away by unusual fluctuations in volumes and been induced into investing in said scrip. Besides, this kind of activity seriously affects normal price discovery mechanism of securities market. People who indulge in manipulative, fraudulent and deceptive transactions, or abet in carrying out of such transactions which are fraudulent and deceptive, should be suitably penalized for said acts of omissions and commissions. With regard to repetitive nature, we find that there was substantial number of such trades repeated over a number of days during investigation period. Hence default was repetitive in nature.

24. After taking into consideration all facts and circumstances of the case, a penalty of Rs.20,00,000 (Rupees Twenty Lakh only) under section 15HA and Rs.5,00,000 (Rupees Five lakh only) under 15HB of the SEBI Act, {i.e. a total

penalty of Rs.25,00,000(Rupees Twenty Five lakh only) has been imposed on Appellant which will be commensurate with violations committed by them.

25. Further, order of Adjudicating Officer and findings are quite comprehensive and brings out role of Appellant, his clients dealing in scrip of ASCL and Mehta Group in manipulations of ASCL scrip. It comes out clearly that Appellant has been deeply involved in manipulating volume and hence price of ASCL scrip by creating artificial volumes in the scrip, placing order in account of his clients, without authorization from clients, finding counter parties for his clients for their buy and sell orders, from amongst Mehta Group, by indulging in reversal trades, so that net position of any of his clients at the end of the day, during IP is zero, by synchronizing trades with counter parties and also executing structured trades, in account of his clients, through some entities of Mehta Group and utilising his funds for meeting their pay-in obligations of his clients. The Appellant was also found not maintaining KYC of his clients properly and for one client KYC did not exist.

26. Appellant is a stock broker and is supposed to be executing trades in securities market on behalf of his clients, as per their sale/buy orders and as per contract note of his client. In the instant case appellant, instead of trading on behalf of his clients, has used the account of his clients, for placing orders in scrip of ASCL leading to artificial volumes in the scrip thus manipulating volumes of the scrip, which led to increase in price of scrip.

27. Appellant, as a matter of fact, placed orders for purchase and sale of 26.25 percent of total market trade in scrip of ASCL during IP in accounts of his clients, namely, Bharat C. Jain, Meen Been, Dilip Rathore, Bhanwarlal Paliwal, Alpesh Dand and Ms. Manisha Mardia and most of these orders were synchronised and quite a few of these structured, which was not possible since these clients were spread in far away places, other than Mumbai, but all the orders for sell/buy in ASCL scrip were placed within a minute of each other on

behalf of these clients with counter parties, who were also entities of Mehta Group and all these sell/buy orders of clients of Appellant were executed by only one terminal of Appellant's office in Mumbai, when many other terminals exists, and all this was not possible without active involvement of Appellant in placed orders in accounts of his clients within seconds to one minute of each other for sell/buy of scrip of ASCL, with four other brokers of who were also similarly trading in accounts of some of their clients, again belonging to Mehta Group; without contract note from the clients.

28. In other words role of Appellant has been proved beyond reasonable doubt, in manipulation of ASCL scrip for increasing volume, thus also price, giving false impression of frequent trading of an otherwise ill-liquid scrip, who induced investors to invest in scrip of ASCL, by creating artificial volumes in ASCL scrip thus contravening sections 4(1), 4(2)(a), (b), (c), (e) and (o) of PFUTP Regulations.

29. Appellant also did not maintain KYC of his clients and also by participating in manipulation of scrip of ASCL, violated Regulation 7 read with clauses A(1), A(2), A(3), A(4) and A(5) of Code of Conduct for Stock Brokers as specified in Schedule II of Brokers Regulations.

30. However, it may be pointed out that role of Appellant in manipulation of scrip, increase in volume and price rise, indulging in circular, synchronized, structured trade, paying clients more than that was due to in client's account, trading in its client account without contract note, etc., has been gone into details, leaving no doubt about role of Appellant in violation of PFUTP Regulations and Brokers Regulations; but purpose of manipulations, has not been brought about by relating the same to profits earned by Appellant, since Appellant seems to be paying to various entities in Mehta Group, than their accounts with Appellant will permit, but no gain seems to have been made; which would have been

possible, if payouts from Appellant were less than receipts in his account, which has not been the case.

31. To put the above, in other words, why a person (say in this case Appellant), will take pains to manipulate in any scrip for increasing volumes (and thus price of scrip) by trading in his clients account, without contract notes from clients, execute false trades in clients account, executive synchronized, structured and/or circular trades; thus exposing himself for charges of violation of PFUTP Regulations and Stock Broker's Regulations; thus also his own and his company's reputation; while at the same time not making any pecuniary benefit but at the same time spending from his own pocket, to meet pay-on obligations of his clients.

32. The Tribunal is thus constrained to point out that investigations/adjudication has not gone into roots of evil and has dealt with the problem superficially by analysing and interpretation of Trade Logs and other data available from stock exchanging, without going into real reasons and hence actual culprits, who spent funds and thus induced appellant alongwith other stock brokers and some key members of Mehta Group to manipulate the scrip of ASCL. Appellant, who is a stock broker seems to have lost money in the process of manipulations in ASCL scrip and after spending almost 28 working days of his broking firm. In such a scenario, why a person will spend time and money, to be held violative of Regulations, is not appreciated.

33. Similarly, it is held that 19,74,219 shares were brought and sold through artificial trades in volumes, by synchronization of trades, which was to the extent of 87.83 percent of total volume, yet only 3284 or 0.17 percent of total volume, were Net Volume. Since most of the trade in ASCL scrip, during IP was of manipulative nature, which resulted in very small Net Volume, what can be the interpretation of this. If Net Volume is available to investors outside Mehta Group, then this volume is insignificant for taking gullible outside investors for a

ride, since this volume is so small and so will be the number of such investors. Hence the conclusion of Adjudicating Officer that anyone could be carried away by usual fluctuations in volumes and been induced into investing in said scrip; is not borne by facts and figures.

34. Similarly, much noise has been made of the fact that Appellant took so long to respond and asked for documents and then to cross examine various entities, who had deposed against him unfavourably, when some very elementary questions were posed to Appellant during investigation and adjudication. Basic questions of Appellant's source of money utilised for manipulation of ASCL scrip and what was the purpose of his manipulation, who were persons behind manipulation, who gained and how, have been conveniently left out.

35. However, even if this Tribunal is unable to find answers to some basic questions arising out of manipulations in scrip of ASCL, yet since, role of Appellant in manipulation of ASCL's traded volume and his not meeting his obligations under Stock Brokers Regulation, have been amply proved, appeal does not deserve to be allowed and is hereby dismissed. No costs.

Sd/-
Justice J. P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
A S Lamba
Member

13.11.2013
Prepared and compared by
RHN