BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 220 of 2012

Order Reserved On : 08.10.2013

Date of Decision : 13.11.2013

Sunil Mehta
Evershine Millenium Paradise-47,
Flat No-1804, Phase-V,
Thakur Village, Kandivali –East,
Mumbai – 400 101. …Appellant

Versus

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

Mr. Rajesh Khandelwal, Advocate with Ms. Mamta Patil, Advocate for Appellant.

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

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

Per : A.S. Lamba

1. The present appeal has been preferred by Shri Sunil Mehta (hereinafter referred to as 'appellant') before this Tribunal after being aggrieved by order of Adjudicating Officer ('AO') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI' or 'respondent') appointed under Section 15(I) of SEBI Act, 1992 read with Rule 3 of SEBI

(Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 to enquire and adjudge under Section 15 HA of SEBI Act, 1992, imposing monetary penalty of ₹ 30 lac on appellant for violation of provisions of Regulations 3(a), (b), (c) & (d) and 4(1), 4(2) (a), (b), (e) & (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations'), in respect of appellant dealing in scrip of Asian Star Company Limited (hereinafter referred to as 'ASCL').

FACTS OF THE CASE:-

2. SEBI conducted investigation in trading of scrip of ASCL for period October 10, 2008 to November 20, 2008 (hereinafter referred to as 'investigation period' or 'IP'). Shares of ASCL are listed at Bombay Stock Exchange ('BSE'). It was observed that during investigation period price of scrip went up from ₹ 1,240.00 on October 10, 2008 to ₹ 1,306.15 on November 20, 2008 (18.57% rise in 28 trading days). While during same period Sensex had fallen by 19.73% (i.e. from 10,527.85 to 8,451.01). Subsequent to investigation period price of scrip started falling and closed at ₹ 905 on January 30, 2009.

3. Role of brokers and their clients, who traded in scrip of ASCL, was scrutinized and it was observed during investigation that certain entities found connected had allegedly indulged in circular / reversal synchronized trading in such a manner that created artificial volume in scrip.

4. It was alleged that one of the connected entities viz., Sunil Kumar Mehta, appellant, trading through broker B P Equities Pvt. Ltd., indulged in

circular / reversal synchronized trades with other brokers and clients and violated regulations 3(a), (b), (c) & (d) and 4(1), 4(2) (a), (b), (e) & (g) of PFUTP Regulations.

5. Show cause notice No. EAD-6/BM/VS/27338/2010 dated November 23, 2010 ('SCN' for short) was issued to appellant under rule 4 of Rules to show cause as to why an inquiry should not be held and penalty be not imposed under Section 15HA of SEBI Act for alleged violation specified in said SCN.

6. Thereafter, appellant vide his reply dated January 6, 2011 denied allegations made against him and made submission which are summarized below:-

(a) That SCN is vague, bad in law and very ambiguous and allegations are not specific, but general in nature. Further, SCN is imprecise and incoherent and does not clearly state mode of commission of such violation if any, with credible evidence signifying the infringement thereof.

(b) I deny my involvement in synchronized trading or trade reversals with the entities mentioned in SCN in scrip of ASCL during investigation period.

(c) That SCN has failed to specify in detail as how trades carried out by me has contributed to the price fluctuation; as price of scrip is affected by innumerable factors like the general market

trend, fundamentals of company, market sentiment, existing market position of market players, etc.

(d) That I have executed jobbing transactions in the scrip. The observation that he was found to be indulged in non-delivery based transaction and therefore net trade volume remained low at less than 1% of daily volume, should not be construed of attributing manipulative intent against me.

(e) That I had purchased and sold 320224 shares through my broker BP Equities and I am neither concerned with nor aware of trades or otherwise of brokers and /or their clients, mentioned in the SCN.

(f) I deny of being aware of any such pattern of synchronized, structured, reversal or circular trades entered into mostly by few brokers trading through their clients on almost every trading day during IP.

(g) That SCN has failed to specify in detail as to which of trades carried out by me and depicted in Annexure 4 and Annexure 5 of the SCN have contributed to alleged synchronized, structured, reversal or circular trades or how the said trades

have resulted into synchronized, structured, reversal or circular trades. Said annexure is vague and very ambiguous and not specific, but general in nature.

(h) That stock exchange has put in place an automated price and order matching mechanism of a system to ensure perfect transparency in trading system. I had placed orders in accordance with my prudence w.r.t. my understanding of securities markets. It is impossible, impracticable and unfeasible for me to detect and perceive intentions and objectives of other entities or even know identity and trade of counter party brokers and their clients.

(i) I deny that entities mentioned as Mehta Group were linked through me.

(j) That Jitendra is my friend. As far as sharing same address and telephone number is concerned I state that sharing of common facilities for sake of convenience and economy between friends does not imply sharing of common thoughts and meeting of minds executing manipulative trades with Mr. Jitendra. I had allowed him to use my address and phone number as a care of address and phone number for correspondence. No adverse inference can be drawn

therefrom. Jitendra would have provided my e-mail id in KYC

on account of our friendship.

(k) That my submissions that trading account of Jitendra was being jointly operated by me and Jitendra and sometime I used to place orders and sometimes Jitendra used to place orders has been totally misconstrued and blown out of proportion. What was intended was that when he was unable to place orders in his account because of technical difficulties; I helped him by placing orders on his behalf under his instructions. I state that his trade decisions were solely his and I have no control over his account.

(l) That Suresh Hanswal is my friend but I deny that I have advised him with respect to his trades in scrip of ASCL. That I was neither aware, involved, connected related nor concerned nor have means to verify acts of omission and commission and alleged relations between Sandeep, Jitendra, Suresh Hanswal, Pradesh and broker Swastika and therefore nor in position to comment upon same and except that Jitendra, Suresh Hanswal and Pradesh are known to me individually. No inference may be drawn therefrom that I was known to all of them as a group and that we were group, as sought to be alleged. SCN has

wrongly sought to stretch relationship to absurd proportions. SCN is grossly silent on my involvement and has sought to rely on extraneous and irrelevant relationship. How does observation/finding that Sandeep was introduced to Swastika by Jitendra, address of Jitendra is same as that of Suresh, pay in obligation of Sandeep have been met by Suresh and Pradesh and that Sandeep and Pradesh are friends, implicate me or points to my involvement if any.

(m) That Suresh and Pradesh are franchisee of Arcadia and therefore it's nothing unusual that they introduced me, my mother Usha Mehta and Jitendra to Arcadia and no adverse inference may be drawn therefrom. In any event though I have account with Arcadia I have not traded through them.

(n) I deny that Pradesh's account with broker First Global was opened by me with his consent and that I had traded on his behalf. I deny that I have lent him funds for purpose of trading through investigation period and put the investigation to strict proof thereof. I am not aware whether he had provided my

e-mail id in KYC with First Global. It is true that I had

introduced my friend to broker Bakliwal and had allowed my address to be used as his care of address for correspondence. I

submit that this was on account of our friendly relation and no adverse inference may be drawn therefrom.

(o) I deny that I had transferred funds to Suresh to meet his as well Sandeep's pay in obligation.

(p) It is true that Manish Mathur is my friend for last 10 years. I deny that accounts were operated by me and the accounts in which Triveni was placing orders for its constituents were counterparties and entered in to synchronized/structured trades for many days.

(q) I strongly deny that alleged synchronized/ structured trades were executed by me in convenience with CEO of Triveni i.e. Manish Mathur. I am neither concerned nor aware about inflow and outflow of funds in accounts of Gopal Lal Mathur and Jitendra Jain. I have been borrowing and lending money on account of our relationship whenever in need and thus fund flows are observed between me and Seema Mathur and Gopal Lal Mathur.

(r) It is true that I was not aware of fact that Manish Mathur operates accounts of Gopal Lal Mathur and got a friendly loan from client of Triveni i.e. Jitendra Jain, and am not aware whether he had taken such huge amount as a friendly loan without any interest and documentations from Jitendra Jain. I further submit that I am not aware of whether loan was

returned in cash and in position to comment upon any contents hereof.

(s) It is true that I have suggested my friend's father Bhanwarlal Paliwal to open account with Triveni. I admit that I have known Bhanwarlal Paliwal, father of my friend Madhusudan Paliwal from 10-15 years and I had introduced him to Triveni as my friend Manish Mathur was working in Triveni as CEO. However, I state that it is absolutely false that I had come with KYC forms of Triveni or open Bhanwarlal's trading account and he signed documents. I also state that fact he had called me and to close account is false.

(t) I am not aware or concerned whether he had knowledge of trading or he had any financial transactions with Triveni.

(u) I strongly deny fact that trading account of Bhanwalal was being operated by me in collusion with Manish Mathur, CEO of Triveni.

(v) That it is true that Ajay Roongta and I are friends, but Arun Sakpal is not known to me. I state that I am not aware whether Ajay Roongta provided funds to Arun Sakpal nor have means

to verify said facts and therefore am not in position to comment upon same.

(w) I deny that I fall in category of those entities who not only operate their own account (or may not operate their own account) but also funded transactions of others, used accounts of others to orchestrate alleged manipulations in shares of the company.

(x) That I exchange i.e. lend and borrowed money with my friends as and when need arises. Accordingly I may have executed bank account transactions with my friends Jitendra, Suresh Hanswal, Gopal Lal Mathur and Seema Mathur. These were nothing but friendly transfers and no adverse inference may be drawn therefrom. SCN is faulty in construing that there was no pay in obligation at relevant time and has proceeded on premise that there has to be a pay in obligation in order to borrow or lend funds. Lending and borrowing may be beyond pay in obligations. It could be for margins towards future business. SCN has failed to appreciate the fact that though I was a client of Triveni I had not traded through them.

(y) That my family members and me i.e. my wife Anjana Mehta and mother Usha Mehta have been borrowing and lending money on account of our relationship whenever in need. As far as flow of funds in my account from Jitendra is concerned and the subsequent transfer thereof I confirm that he is my friend.

> SEBI itself has observed that such inflows and outflows were also observed before and after investigation period. This observation itself proves that relationship for lending and borrowing and flow of funds was normal feature between parties and attributing same solely for trading in ASCL is grossly disproportionate to allegations. It is normal between friends to lend and borrow money. As far as what they did with funds I am not aware and hence cannot comment upon the same. SCN seeks to travel beyond normal banking relations between parties over whom I have no control and need to be set aside.

7. In interest of natural justice and in order to conduct an inquiry as per rule 4 (3) of the Rules, appellant was granted an opportunity of personal hearing on April 21, 2011 vide notice dated April 01, 2011 and appellant finally appeared for hearing April 27, 2011 and was offered to inspect documents which he had sought for in his reply dated vide letter dated December 14, 2010 and January 06, 2011. However, appellant submitted that he does not require documents and submitted that rep*ly* dated January 06, 2011 shall be considered as the final submission. Appellant was further advised to give detailed source of certain cash transactions of above ₹ 1,00,000 which was observed to be deposited in his bank account. Noticee was provided with the copy of circular/ reversal trade executed between him and entities which were alleged to be connected with each other (hereinafter referred to as **"Mehta group"** comprising of Noticee, Sandeep Jain, Suresh Hanswal, Pradesh Nimawat, 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, Ajay Roongta, Manish Mathur and Triveni Management Consultancy Service). Appellant vide letter dated May 25, 2011 merely submitted that amount deposited in his bank account was his cash in hand balance and denied his involvement in synchronized/ circular/ reversal/ structured trades but did not submit details of source of cash received by him.

CONSIDERATION OF ISSUES AND FINDINGS:-

8. As per Adjudicating Officer, allegations against the appellant are as follows based on submissions of appellant and documents available on record:-

a) Appellant entered into circular, reversal, synchronized and structured trades with Mehta Group and influenced price of scrip of company and created artificial volume.

b) Mehta Group entities were connected to each other and with appellant.

c) Appellant funded transactions of Mehta Group by making third party payments to meet their pay-in obligations.

d) Appellant operated trading account of his mother Usha Mehta and other Mehta Group entities and played main role in manipulating scrip of ASCL.

9. In view of the above it is alleged that appellant violated provisions of Regulations 3(a), (b), (c) & (d) and 4(1), 4(2) (a), (b), (e) & (g) of PFUTP Regulations, which are described below:

"3. Prohibition of certain dealings in securities

No person shall directly or indirectly-

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there 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) .....

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

FINDINGS:

10. Appellant contention that he was not provided with documents but during personal hearing held on May 9, 2011 appellate was offered copies and an opportunity to take inspection of documents which were sought by him vide letters dated December 14, 2010 and January 6, 2011. However during course of hearing appellate submitted that he does not require documents and his reply dated January 6, 2011 shall be considered as his final submission. Therefore submission made by appellant in his reply dated January 6, 2011 is considered as final submission to SCN dated November 23, 2010.

11. Findings in in connection with role of appellant on violations as alleged in the case and upon careful perusal of material available on record and submissions made by appellant AO concluded:

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

b) There was neither price sensitive news/announcement which might have supported the price and financial results of company did not justify price rise in scrip of ASCL, since on October 16, 2008 company declared results of the quarter ending September 30, 2008 which showed that net profit had declined to ₹ 106.439 million from ₹ 110.659 million during same quarter of previous year.

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

Global") at 19.27 %, 17.97 % and 16.97 % respectively. Appellant traded through B P Equities and bought 320224 shares and sold 320224 shares during IP which accounted for 16.22% and 16.22% respectively of market volume during IP.

d) From trade and order log analysis it may be noted that appellant and entities i.e. viz: Jitendra Jain, Sandeep Jain, Pradesh Nimawat, Arun Sakpal, Usha Mehta, Bharat C. Jain, Narendra Sanghi, Rajnish Bhanwarlal Jain, Meen Been Elastomers, Dilip Rathore, Bhanwar Lal Paliwal, Alpesh G Dand, Manisha Mardia executed synchronized/structured trades. These entities were found to be linked with each other through Noticee, Ajay Roongta, Manish Mathur and together formed **"Mehta group"**. The relationship/connection of the Mehta group entities is elaborated below:

i) Appellant is son of Usha Mehta and shares same phone number (9322123257) as well as joint bank account (HDFC Kandivali Bank account No. 01821000063096) with Usha Mehta.

ii) Trading account of Usha Mehta was admittedly operated by Appellant.

iii) Appellant has submitted before investigation that Jitendra, Pradesh, Ajay Roongta and Manish Mathur were his friends.

iv) Appellant has entered into bank account transaction with Suresh, Jitendra, Gopal Lal Mathur, Seema Mathur (Wife of Manish Mathur, CEO of the broker Triveni) and Triveni (even though Noticee did not trade through the broker Triveni in scrip of ASCL).

v) Appellant, Usha Mehta and Jitendra were introduced to broker Arcadia by Suresh and Pradesh.

vi) Jitendra has provided email id and phone number (9322123257) of appellant in KYC with broker Emkay Global and address (Evershine Millenium Park, EMP 47, Flat no. 1804, Thakur Village, Kandivali (E), Mumbai, Maharashtra, 400101) and phone number (9322123256) of appellant in the KYC with BP Equity. Further Noticee has submitted that Jitendra was his friend and trading account of Jitendra was being jointly operated by him and Jitendra. Sometime he used to place orders and sometime Jitendra used to place orders. Noticee and Jitendra Jain hold joint account number 1821000064427 with HDFC, Kandivali.

vii) Jitendra has entered into bank account transactions with appellant, Usha Mehta, Anjana Mehta (wife of Noticee), Gopal Lal Mathur (Father of Manish Mathur, CEO of Triveni). Fund movement was also observed between Jitendra and the broker Triveni though Jitendra did not trade through Triveni in the scrip of ASCL.

viii) Suresh is admittedly friend of appellant and it was observed that Suresh dealt in scrip on his advice. Further Suresh and Pradesh were partners in their firm Siddhi Shares and share same office in Udaipur.

ix) Appellant had transferred funds to Suresh who further transferred it to broker Anagram for his pay in obligation and to the broker Swastika for pay-in-obligation of Sandeep.

x) Sandeep and Pradesh are known to each other for 7-8 years and are friends. For pay in obligation of Sandeep cheques from account of Pradesh were deposited.

xi) Sandeep was introduced to broker Swastika by Jitendra and address of Jitendra mentioned in the KYC of Sandeep with Swastika is same as that of office of Suresh and Pradesh.

xii) Arun Sakpal and Ajay Roongta used to work in same branch of broker Bakliwal. Ajay Roongta has accepted that he had provided funds to Arun Sakpal.

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

xiv) Bhanwar Lal Paliwal has submitted that it was appellant who opened his account with Triveni. Appellant admitted to have known Bhanwarilal Paliwal, as his son Madhusudan Paliwal was his friend. Further from trading pattern it was observed that counter party to trades of Bhanwarilal was appellant.

xv) Alpesh Dand has submitted that Triveni was dealing in his account and he had allowed them to deal in the scrip (while Triveni suggested them to deal in scrip) under

overall limit of Rs. 150000/-.

xvi) Manisha Mardia was client of Triveni has submitted that Triveni suggested her to invest in the scrip. She decided overall exposure limits and actual buy and sell was done by Triveni on their own terminal.

xvii) Pradesh has provided email Id of appellant in KYC with First Global. He has stated before IA that his account with First Global was opened by his friend (i.e. appellant) with his consent. He has also stated that he had borrowed funds from appellant for purpose of trading.

xviii) Pradesh was introduced to Bakliwal by appellant and address mentioned in KYC is same as that of appellant.

xix) Rajnish Jain has submitted that he knows appellant hrough a common friend Ajay Roongta. Rajnish was introduced to Bakliwal by Ajay Roongta.

xx) Ajay Roongta submitted that appellant was introduced to him by Manish Mathur.

xxi) Both appellant and Manish Mathur have submitted that they are friends. Further, there were fund flow between appellant on one hand and Seema Mathur and Gopal Lal Mathur, wife and father of Manish Mathur respectively, on other hand.

12. It can be seen from the above that entities including appellant interconnected with each other.

13. Regarding issue of involvement of appellant in manipulating scrip of ASCL, it may be noted that Mehta Group was found to be entering into transactions which were in nature of reversal of trade/ circular trade and that

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). It is seen that large numbers of synchronized trades were being entered into mostly by few brokers trading for their clients on almost every traded day during the period and that out of total 6953 number of synchronized deals the contribution of the brokers was as follows:- Triveni contributed 1903 deals while BP Equities, Swastika, Emkay Global, India Infoline, contributed 1224, 1396, 1058, and 325 deals respectively. It is also further seen that out of these synchronized deals large number of deals were also structured.

14. It may be noted that Mehta Group dealt in synchronized and structured trades which amount to significant percentage of total market volume both in terms of quantity traded as well as number of trades, while daily net trade remained insignificant. When most of was being contributed in synchronized trades by Mehta Group, price of scrip was going up while Sensex was coming down. It is also noted that 87.83% of the total market volume and 72.33% of total number of trades were contributed by synchronized trading and 44.95% of total market volume and 30.65% of total number of trades were contributed by structured trades.

15. It may be noted that appellant entered into trades with Alpesh, ARun Sakpal, Bharat Jain, Dilip, Jitendra, Manisha Mardia, Meen Been, Narendra,

Pradesh, Sandeep, Suresh and Usha Mehta which were in nature of circular and reversal and that such reversal trading was executed by appellant for 23 days i.e. from October 17, 2008 to November 20, 2008 with Mehta Group entities only. The above trades led to manipulation of volume and influenced price of scrip.

16. From transactions entered into between appellant and Mehta group it is evident that appellant had connection with the counter party clients and along with Mehta group entities executed large number of synchronized trades, placed orders higher than the LTP and were manipulating the price of the scrip of the company. Appellant's individual trading volume was 16.22% of the total market buy/ sell volume which was significant and when seen together with Mehta group proves his active participation in manipulating the scrip during investigation period.

17. There was extensive fund flow between appellant and other related entities and details of such transactions may be seen at pages 29 – 32 of Impugned Order.

18. From trade log it was also observed that appellant contributed 145 times out of 1050 instances when price increased more than ₹ 5 in single order than Last Traded Price (LTP).

19. It is seen that appellant was placing orders on behalf of his own account, Jitendra Jain's account and Usha Mehta's account and trades were matching between these account and from KYC of Jitendra it is observed that this contact number, correspondence address and email id were all belonging to appellant. Rajeev Menon on behalf of broker B P Equities

submitted before IA the trades done in account of Jitendra was being provided by calling client on mobile number mentioned in KYC and physical contract notes were being issued at address provided in KYC. Thus it can be concluded from above that Noticee was operating the trading account of Jitendra. In Usha Mehta's account 271 buy and 322 sell orders were executed for 120934 shares and 137759 shares respectively which were found to be structured with Mehta Group. All these orders were placed by appellant without taking any written authorization of Usha Mehta. It is observed from submission of Dinesh Tanwar of India Infoline Limited before IA that trading orders for their client Usha Mehta were being placed by appellant through telephone number 9320223257. Appellant was therefore acting as front of Usha Mehta. These types of third party operated accounts are threat to safety and integrity of market.

20. From details of fund transfers, it is seen that appellant was getting

deposit in his various accounts in cash i.e. he got cash of ₹ 4568600/-

deposited in his various accounts during the investigation period, same amount for the period August 2008 to January 2009 was much more than ` one crore and the same was being subsequently transferred to different trading entities. Other entities viz: Suresh Hanswal, Pradesh Nimawat and Jitendra Jain were using same funds for their pay in obligation or routing to brokers for pay in obligation of some other entities.

21. Appellant has not denied his connection with Usha Mehta, Jitendra Jain, Suresh Hanswal, Pradesh Nimawat, Bhanwarlal Paliwal, Ajay Roongta and Manish Mathur. Appellant has accepted that he was trading through the trading accounts of Usha Mehta. It is observed from the records that appellant was also operating account of Jitendra Jain. If taken into account trading of appellant, Usha Mehta and Jitendra Jain it is observed that the trades accounted for 43.24% of total market volume further. Further the circular/ reversal trades which were executed by appellant in these three accounts constituted 40% of the total market volume and synchronized trades constituted 32.25% of the total market volume which was concentrated amongst Mehta group entities. Hence, it is observed that appellant was main contributor to manipulative trading. Appellant also transferred/ received funds to/ from Jitendra Jain, Suresh Hanswal, Pradesh Nimawat most of which were used for pay in obligations of Mehta group entities. Thus, connection of Noticee with Mehta group, circular and synchronized trades and funds transfer between them shows that Appellant was controlling trading of Mehta group entities and thus clearly bring out ominous role played by appellant in manipulation securities market.

22. As can be seen from above intention of appellant was to create artificial volume in the scrip of ASCL and to influence price of scrip during investigation period. Such acts of manipulative trading by appellant helped in creating artificial demand and thereby leading to false appearance of trading in the scrip of ASCL and also causing fluctuations in price of the scrip of the company. Hence in the light of the facts of the case and materials available on record, AO concludes that appellate has violated the

provisions of Regulation 3 (a), (b), (c), (d), 4(1) and 4(2)(a), (b), (e) & (g) of PFUTP Regulations.

23. Thus aforesaid violations by appellant make him liable for penalty under Section 15HA of 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."*

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

> ***"15J - Factors to be taken into account by the adjudicating officer***
>
> *While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*

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

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

(c) the repetitive nature of the default."

25. 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 the investors. AO note 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 traded 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 an investment decision. In fact, liquidity/volumes in particular scrip raise issue of 'demand' in securities market. Greater the liquidity, higher is the 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 the said scrip. Besides, this kind of activity seriously affects the normal price discovery mechanism of the securities market. People who indulge in manipulative, fraudulent and deceptive transactions, or abet carrying out of such transactions which are fraudulent and deceptive, should be suitably penalized for said acts of omissions and commissions. Appellant on various instances receiving/ transferring funds from/ to Mehta group entities for meeting their pay in obligations and acted as a main conspirator behind manipulation. With regard to repetitive nature, it is seen that there was substantial number of such trades repeated over a number of days during investigation period. Further, it is observed that

appellant was imposed penalty for violation of PFUTP Regulation in the matter of Allcargo Global Logistics Ltd. & Unity Infraprojects Ltd vide order dated May 11, 2011, Jaybharat Textiles and Real Estate Limited vide order dated August 26, 2011 and Synchronized Trades by Connected Persons vide order dated August 31, 2012. Hence, default of appellant is repetitive in nature.

ANALYSIS OF FINDINGS OF ADJUDICATING OFFICER:-

26. In view of clear findings by Learned Adjudicating Officer, all the pleas and explanations of appellant clearly emerge as not applicable or worth consideration or need elaborate explanation to conclude that pleas of appellant do not held. Enquiry and subsequent adjudication on conduct of appellant, proves beyond reasonable doubt that scrip of ASCL was manipulated in terms of volume and price, which created false volumes and price rise of scrip through various activities of all connected entities of Mehta Group and Sunil Mehta was the brain behind these manipulations. Since he not only carried out manipulation in scrip of ASCL in his own account, but also in account of others in Mehta Group and supplied pay-in obligations of other entities of Mehta Group by providing necessary funds.

27. Appellant was the brain behind Mehta Group and was directing most of the action of the Group, which engaged in manipulation of volumes of ASCL scrip for creating artificial volumes through reversal, synchronization and structured trades in the scrip. Appellant, operated trading account of his mother, Usha Mehta, Jitendra, his wife, Anjana Mehta, Gopal Lal Mathur, and transactions in these accounts were executed to manipulate volumes in

scrip of ASCL and also its price. Appellant also advised his friend Suresh, another entity of Mehta Group, to transact in scrip of ASCL. Thus appellant himself indulged in manipulations in scrip of ASCL in his own account and operated / accounts of other entities of Mehta Group for carrying out manipulations in scrip of ASCL, as well as advised Mehta Group members to execute manipulation in company's scrip.

28. Entities of Mehta Group were divided into five groups and each group traded through one broker and all activities of all entities of Mehta Group for dealings in ASCL, were executed through these brokers were formed to the controlling total market volume of ASCL scrip and 87.83% of market volume was synchronized traded between Mehta Group entities, and 44.95% of market volume was structured trade by these group entities and all synchronized and structured trading was carried out by five brokers acting on behalf of Mehta Group entities. Appellant entered into large number of synchronized trades with other entities of Mehta Group and placed orders at prices higher than LTP in 145 times out of 1050 instances, when price increased by more than ₹ 5 in single order. Appellant was responsible for individual trading volume of 16.22% of market buy / sell volume, which was significant, and when seen together Mehta Group, proves his active participation in manipulation of volume / price of scrip of ASCL during IP.

29. Extensive flow of funds flow appears between appellant and other Mehta Group entities. From details of funds transfers to and from appellants various bank accounts to other Mehta Group entities' accounts, it is seen that ₹ 45,68,600/- were deposited into appellant's various bank accounts

during IP and more than ₹ 100 lac were transferred to different trading entities, who utilized these funds to meet their pay-in-obligations. Thus, appellant was not only executing trades on behalf of himself and some other entities, but was also funding these transactions of other entities for their trades in ASCL.

30. It is, thus, clear that appellant indulged in manipulation of scrip of ASCL and created artificial volume and manipulated price of ASCL scrip during IP and thus violated provisions of Regulations 3(a), (b), (c) & (d) and 4(1), 4(2) (a), (b), (e) & (g) of PFUTP Regulations and in view of these violations, which have been substantiated, the appeal of appellant does not succeed. 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:
msb