WTM/GM/EFD/8/2019–20

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 11 AND SECTION 11B OF THE SEBI ACT READ WITH REGULATION 11 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 1995 AND REGULATION 13(2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003.

IN THE MATTER OF ADANI EXPORTS LIMITED –

	NOTICEE	PAN
1.	JAYDEV RAJA	NOT AVAILABLE

BACKGROUND –

1.1 Adani Exports Limited ("**Adani Exports**") was incorporated under the Companies Act, 1956. The shares of Adani Exports are listed on BSE Limited ("**BSE**") and the National Stock Exchange of India Limited ("**NSE**").

1.2 Securities and Exchange Board of India ("**SEBI**") conducted an investigation in the scrip of Adani Exports during the period from January 1999 to February 2001 ("**Investigation period**"). On the basis of the findings contained in the Investigation Report, a Show Cause Notice dated January 13, 2014 ("**SCN**") was issued to the following entities, viz. –

(a) Ravi Parthasarathy – Chairman of HSBC InvestDirect Securities (India) Limited – erstwhile M/s Investmart Securities India Limited ("**IIL/Stock Broker**");
(b) Jaydev Raja ("**Noticee**") – Non–Executive Director of IIL;
(c) Vimal Bhandari – Director of IIL;
(d) Arun K. Saha – Director of IIL;
(e) Vibhav Kapoor – Director of IIL and
(f) Hemang Raja – Director of IIL.

1.3 The SCN states –

(a) IIL is alleged to have traded in the shares of Adani Exports on NSE on December 14, 2000 and December 27, 2000 ("**relevant trades**") on behalf of Ketan Parekh Group ("**KP Group**") entities, viz. (i) Panther Fincap & Management Services Limited, (ii) Luminant Investments, (iii) Classic Credit Limited, (iv) Panther Investrade Limited and (v) Saimangal Investrade Limited (collectively referred to "**Clients**"). IIL sold the

shares held by the Clients with Classic Shares and Stock Broking Services Private Limited ("**Classic Stock Broking**"), another KP Group entity, thereby resulting in synchronised/structured and cross trades between the same KP Group entities. The relevant trades executed by IIL on behalf of the KP Group entities resulted in price/volume manipulation and an appearance of artificial trading in the scrip of Adani Exports.

(b) IIL is alleged to have made spot payments to the extent of ₹57 Crores for sale transactions on behalf of the Clients even before receipt of pay–out from the Stock Exchanges.

(c) The entities mentioned at paragraph 1.2(a)–(f) were the Chairman and Directors of IIL and were in charge of the affairs of the Stock Broker during the investigation period i.e. when the alleged structured/synchronised and cross trades took place and when IIL made spot payment to the Clients before receipt of pay–out from the Stock Exchanges. The aforementioned entities are alleged to have failed in taking steps to prevent IIL from executing the aforesaid trades. Further, the aforementioned entities are alleged to have failed in ensuring adherence with the Code of Conduct for Stock Brokers as specified in Schedule II of the SEBI (Stock Broker and Sub–broker) Regulations, 1992 ("**Stock Broker Regulations, 1992**"). As a result of the aforesaid, the aforementioned entities are alleged to have violated Regulation 4(a), (b), (c) and (d) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 1995 ("**PFUTP Regulations, 1995**").

1.4 Pursuant to receipt of the SCN, Ravi Parthasarathy, Hemang Raja, Vimal Bhandari, Arun Kumar Saha and Vibhav Kapoor had filed separate Settlement Applications each dated March 3, 2016 in terms of the SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014 ("**Settlement Regulations**"). Upon a consideration of the aforementioned Applications, SEBI vide an Order dated February 13, 2017 *inter alia* disposed of the proceedings initiated against the aforementioned entities under Sections 11 and 11B of the SEBI Act, 1992 ("**SEBI Act**") vide the SCN dated January 13, 2014.

1.5 The Noticee had also filed an Application dated February 17, 2016 in terms of the Settlement Regulations but subsequently withdrew the Application vide letter dated September 13, 2016.

1.6 Accordingly, having regard to paragraphs 1.4 and 1.5, the instant proceedings are only in respect of the Noticee and not the other entities mentioned at paragraph 1.2.

HEARING –

2.1 Subsequent to issuance of SCN, the Noticee filed preliminary replies to the SCN vide letters dated January 11, 2016 and January 14, 2016; an opportunity of personal hearing was granted to the Noticee on various occasions and such dates along with details of appearances/responses are listed out hereunder:

i. **February 10, 2016:** An opportunity of personal hearing was granted to the Noticee on February 5, 2016 which was rescheduled to February 8, 2016. However, the Noticee requested for adjournment, which was acceded to by SEBI and accordingly, the hearing was rescheduled to February 10, 2016. The Noticee had filed an additional reply to the SCN vide letter dated February 9, 2016 and thereafter, appeared for the hearing on February 10, 2016 wherein he was represented by Advocate Ipsita Dutta (Cyril Amarchand).

ii. **October 31, 2017:** An opportunity of personal hearing was granted to the Noticee on October 31, 2017. The Noticee requested for adjournment, which was acceded to by SEBI and thereafter, the personal hearing was rescheduled to June 26, 2018.

iii. **June 26, 2018:** The Noticee appeared for the hearing and was represented by Advocates Shruti Rajan and Rohan Banerjee (Cyril Amarchand). The Noticee also filed additional written submissions dated July 17, 2018, subsequent to the personal hearing.

REPLIES DATED JANUARY 11, 2016, JANUARY 14, 2016, FEBRUARY 9, 2016 AND ADDITIONAL WRITTEN SUBMISSIONS DATED JULY 17, 2018 PURSUANT TO THE HEARING –

2.2 Vide the above–mentioned correspondences, the Noticee *inter alia* submitted as under –

*a. IIL was a domestic brokerage house, which had been operating as a Stock Broker since 1998 wherein 76.76% of the shares of IIL were held by IL&FS. The Noticee had joined the Board of Directors of IIL ("**Board**") as a Non–Executive Director in 1998 upon being invited by the Chairman and Managing Director of IIL. At the relevant time, the Noticee had been the Managing Director/Chief Executive Officer of Iridium India Telecom Limited ("**Iridium**").*

b. The Noticee had tendered his resignation from the position of Non–Executive Director of IIL sometime after the Noticee's brother, viz. Hemang Raja, had been appointed as a Managing Director/Chief Executive Officer of IIL in 1999. Subsequently, the Noticee had stopped attending the Board meetings of IIL since he was preparing to relocate to USA. The Noticee's resignation had been officially accepted

by the Board in June 2001 at which time the Noticee had already permanently moved back to USA and he does not have any records pertaining to his resignation from the Board of IIL.

c. *In September 2008, a majority stake in IIL (now known as HSBC InvestDirect Securities (India) Limited) was acquired by HSBC Securities and Capital Markets (India) Private Limited and HSBC Violet Investments (Mauritius) Limited. The Noticee had reached out to HSBC vide letter dated July 9, 2018 seeking copies of the minutes of the Board Meeting of IIL during the period from 1998–2001 as well as the Agenda and Board papers related to such meetings. However, as on the date of filing of the instant reply (July 17, 2018), the Noticee had not received any response from HSBC.*

d. *The Noticee received agenda briefing papers in relation to a Board Meeting of IIL at the relevant period and made reasonable efforts to attend the Board meetings of IIL during his tenure as a Non–Executive Director. To the best of the Noticee's knowledge and recollection, he had not been consulted or informed of (i) the relevant trades executed by IIL and (ii) the spot payment made by IIL to certain clients in relation to the aforementioned relevant trades, at any time during his Directorship and further, no specific discussions were carried out on client specific activities or extension of credit facilities or advance pay–outs to clients during the Board meetings of IIL.*

e. *The Noticee had vide letter dated January 27, 2016 sought an opportunity to inspect the documents not provided at the time of inspection and had also sought some clarifications/confirmations from SEBI. However, notwithstanding the above mentioned request, SEBI failed to provide the additional documents and also failed to give clarifications/confirmations sought in this regard. Further, certain documents relied upon by SEBI and included in the SCN and SEBI's letter dated February 3, 2016 are mere unauthenticated photocopies having no evidentiary value.*

f. *In its letter dated February 3, 2016, SEBI has stated that the purported trade order logs had been received from the exchanges without specifying the precise source. In terms of confirmation by SEBI at the time of inspection and as recorded in Annexure II of the Record of Inspection, the Noticee understands that the purported trade order logs have been relied upon by SEBI as the underlying data for (a) the tables in paragraph 3 and 4 of the SCN, (b) specifying the details of the net and gross quantity traded by IIL on behalf of its clients during the period January 1999 to February 2001, (c) the allegation that IIL had engaged in cross trades and structured synchronised trades while trading in shares of Adani Exports on behalf of the clients who were KP Group entities and selling shares for them to Classic Stock Broking ("**Purchasing Broker**") (as set out at paragraph 3 and 8 of the SCN, and (d) the allegation that trades executed by IIL on behalf of the Clients in the scrip of Adani Exports were synchronised/structured and cross trades and resulted in a manipulation of price and/or volume of the shares of Adani Exports and caused an appearance of artificial trading in the shares of the said Company.*

g. *Certain discrepancies and inconsistencies were observed in the information provided in the Table at paragraph 3 which render it unreliable and cannot be relied upon to formulate any charge against the Noticee. The Noticee submits that a Broker such as IIL typically has no control over the total volumes traded in any stock since such trades are put through by a Broker upon receipt of instructions from its clients in the normal course of business. Further, the relevant trades in the instant case were executed at the prevailing market price. The information contained in the purported trade/order logs do not in any manner indicate how the relevant trades may be said to be synchronised/structured or how such relevant trades may have resulted in a manipulation of the price and/or volume of the shares of Adani Exports or cause an appearance of artificial trading.*

h. *Separately, during the inspection, SEBI also provided true copy of the email dated January 23, 2014 of HSBC InvestDirect (India) Limited to SEBI. As per SEBI's Notice for Inspection, this HSBC email has been relied upon by SEBI to allege that the Noticee was in charge of IIL at the relevant time and was responsible for the acts and omissions of IIL. At the outset, it is respectfully submitted that the aforesaid email was received by SEBI subsequent to issue of SCN and therefore, could not have been relied upon by SEBI while formulating charges and allegations in the SCN. In any event, the email does not list out Noticee's name and in fact it categorically states that no information in relation to 'names of the officials/person specially designated or in charge for broking business' was available with HSBC InvestDirect (India) Limited. Therefore, the email does not establish the allegation made by SEBI in paragraph 9 of the SCN.*

i. *Also at the time of inspection, SEBI had provided certified true copy of letter dated February 18, 2005 of IIL to SEBI. From the review of the said letter, we note it inter alia encloses sample details of advance payment made to retail clients of IIL whereas the clients in relation to the relevant trades belonged to the segment of institutional clients. The provision of spot payment facility did not involve any credit risk to be undertaken by IIL and to the best of the recollection of the Noticee, no specific credit approval was required in any particular transaction notwithstanding the magnitude of the advance pay out. As such, the grant of spot payment facility to either retail or institutional clients of IIL did not require any specific approval from the Board of Directors of IIL.*

j. *At the time of inspection, SEBI had provided a photocopy of a letter from IIL to SEBI dated April 25, 2003. Separately, vide letter dated February 3, 2016, SEBI also shared unauthenticated and unverified photocopies of details of certain trades executed in the scrip of Adani Exports, which contain references to the 'Buy Client Name' and 'Buy TM Name'. SEBI has not explained the source or legitimacy of the documents. Without prejudice, (a) at the time that the Clients were on–boarded by IIL, as far as the Noticee is aware, all relevant KYC checks had been undertaken and there was no reason for either IIL or the Noticee to believe that the Clients would engage in anything but genuine trades and the findings in relation to market manipulation committed by Ketan Parekh was not known at the time the relevant trades were executed by IIL and (b) SEBI has not provided any evidence in support of the allegation that*

*the Noticee was aware of the identity of the Purchasing Broker or that the purchasing Clients were KP Group entities and IIL or the Noticee had knowledge of the same at the time the relevant trades were undertaken. In fact, based on a review of the certified true copy of statement dated April 25, 2003 of Sachin Joshi [then Chief Financial Officer ("**CFO**"), IIL] which was provided at the Inspection, the Noticee also notes that in the said statement, Sachin Joshi had confirmed to SEBI that IIL was not aware of the identity of the counter party buyer in the relevant trades. Therefore, there does not exist any reason to question IIL's conduct as the Stock Broker executing relevant trades in the normal course and in accordance with applicable laws.*

PROVISIONS OF LAW ALLEGED TO HAVE BEEN CONTRAVENED AS PER THE SCN –

3.1 Before I proceed further, the relevant legal provisions, the contravention of which have been alleged in the instant proceedings, are reproduced below –

i. SEBI (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 1995 –

Prohibition against Market Manipulation.

4. No person shall -

(a) effect, take part in, or enter into, either directly or indirectly, transactions in securities, with the intention of artificially raising or depressing the prices of securities and thereby inducing the sale or purchase of securities by any person;

(b) indulge in any act, which is calculated to create a false or misleading appearance of trading on the securities market;

(c) indulge in any act which results in reflection of prices of securities based on transactions that are not genuine trade transactions;

(d) enter into a purchase or sale of any securities, not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress, or cause fluctuations in the market price of securities;

ii. SEBI (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003 ["PFUTP REGULATIONS, 2003"] –

(13)(2) Notwithstanding the repeal of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995, any violation of Regulations 3, 4, 5 and 6 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities

Market) Regulations, 1995, shall be investigated and proceeded against in accordance with the procedure laid down in these Regulations.

PRELIMINARY OBJECTION FROM THE NOTICEE AND FINDINGS –

3.2 The Noticee has contended that the inspection provided by SEBI was not complete since only photocopies of documents (which do not have any evidentiary value) were provided and further, the source of purported trade/order logs, whether received from the Stock Exchange and details of communication regarding the same, has not been identified by SEBI.

3.3 I note that the Noticee was granted an opportunity for inspection of documents on January 25, 2016 and February 5, 2016 wherein the following documents were shown by SEBI and inspected by the authorised legal representatives of the Noticee, viz. –

a. True and certified copy of the statement dated April 25, 2003 of Mr. Sachin Joshi, CFO, IIL.
b. Copy of letter dated April 25, 2003 from IL&FS Investmart Securities Limited ("**IL&FS Investmart** – erstwhile IIL") to SEBI.
c. CD containing trade/order log of IL&FS Investmart in the scrip of Adani Exports.
d. True and certified copy of letter dated February 18, 2005 from IL&FS Investmart to SEBI.
e. True and certified copy of the e–mail dated January 23, 2014 from HSBC InvestDirect Securities (India) Limited.

3.4 As observed from the preceding paragraph, I note that all relevant and available documents as obtained by SEBI and which were relied upon in the SCN dated January 13, 2014 or referred to during the Investigation, were either provided to the Noticee along with the said SCN or thereafter, during the course of inspection of documents as requested by him. While the original documents were not made available to the Noticee, the same was on account of SEBI itself having obtained only copies of such documents from IIL, IL&FS Investmart and HSBC InvestDirect Securities (India) Limited. I also note that the aforementioned documents have been certified as the copies that were received by SEBI. Further, as regards the trade/order logs provided to the Noticee, the same have been obtained from the Stock Exchange and provided by SEBI to the Noticee in an electronic format through a CD. In this context, it may be noted that such trade/order logs as obtained by SEBI for the purpose of its investigation form part of ordinary records maintained by the Stock Exchange on a day–to–day basis, which can be rebutted by the Noticee only by placing reliance on better evidence, if available with him. The Noticee has however, sought to discredit the evidentiary value of such trade/order logs in the aforementioned manner (refer to paragraph 3.2) merely through

advancement of technical objection without producing any other proof/record of different trades/orders placed by IIL. Accordingly, the aforementioned documents cannot be discredited merely on the ground that originals were not provided to the Noticees. In this context, reliance is also placed on the observations of the Supreme Court in ***Dhakeswari Cotton Mills Limited vs. Commissioner of Income Tax, West Bengal, 1955 SCR (1) 941*** to the extent that the *administrative and quasi–judicial tribunals are not fettered by technical rules of evidence and pleadings and that they are entitled to act on material which may not be accepted as evidence in a Court of law*. Having regard to the aforementioned, I do not agree with the preliminary objection raised by Noticee.

CONSIDERATION OF ISSUES AND FINDINGS –

4.1 I have considered the material available on record i.e. SCN along with the relevant documents provided to the Noticee; replies received to the aforesaid SCN and all other relevant material available on record. In light of the same, I shall now proceed to deal with the charges levelled against the Noticee as mentioned at paragraph 1.3 of this Order.

4.2 As already stated at paragraph 1.3, the relevant trades allegedly executed by IIL in the scrip of Adani Exports on December 14, 2000 and December 27, 2000 had resulted in synchronised/structured and cross trades between the same KP Group entities. The relevant trades allegedly executed by IIL in turn caused price/volume manipulation and an appearance of artificial trading in the scrip of Adani Exports. In addition, IIL is alleged to have made spot payments to the extent of ₹57 Crores for sale transactions on behalf of the Clients even before receipt of pay–out from the Stock Exchanges.

4.3 As a Non–Executive Director of IIL, the Noticee has submitted that he was not authorised to issue contract notes or receive instructions from clients for the purpose of execution of trades or engage with them in any manner and would have been aware of only such matters that were brought before the Board of Directors of IIL, which would not have included trades executed by IIL in the normal course of its business and trading activities.

4.4 From the SCN, I find that apart from the statement that the Noticee was Director of IIL, there is no evidence or documents placed on record to substantiate the allegation contained therein that the Noticee was in charge of and responsible for sanctioning/approving the relevant trades executed by IIL or authorising the spot payments of ₹57 Crores for sale transactions on behalf of the Clients even before receipt of pay–out from the Stock Exchanges. I also note that the email dated January 23, 2014 of HSBC InvestDirect (India) Limited was received at SEBI subsequent to the issuance of SCN and therefore, could not have been relied upon for formulating charges in the SCN. Further, from the submissions made by the Noticee, I note that he had joined the Board of Directors of IIL as a Non–

Executive Director in 1998 and at the relevant time, he was also the Managing Director/Chief Executive Officer of Iridium. I also note that the Noticee had tendered his resignation from the position of Non–Executive Director of IIL in 1999, which was officially accepted by the Board of Directors of IIL in June 2001, to pursue his relocation to USA. Having regard to the aforementioned facts and in the absence of sufficient evidence, I am inclined to believe that the Noticee may not have had an opportunity to get involved in the day–to–day stock broking business of IIL including in the execution and settlement of trades by the Stock Broker for its clients. In view of the aforesaid, I am inclined to give the benefit of doubt to the Noticee and accordingly, no adverse inference is drawn against him in the instant proceedings.

ORDER –

5.1 In view of the foregoing, I, therefore, in exercise of the powers conferred upon me by virtue of Section 19 read with Section 11 and Section 11B of the SEBI Act read with Regulation 11 of the PFUTP Regulations, 1995 and Regulation 13(2) of the PFUTP Regulations, 2003, hereby dispose of the SCN dated January 13, 2014, against the Noticee without any further directions.

5.2 This Order shall come into force with immediate effect.

5.3 This Order shall be served on all recognized Stock Exchanges and Depositories.

Place: Mumbai
Date: May 27, 2019

G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA