

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

[ADJUDICATION ORDER NO. VSS/AO- 02/2010]

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UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

In respect of

Rajkumar Jain	Not Available
Kumud Jain	AAIPJ5196J
Aditya Jain	AAGPJ4260R
Vivek Jain	AFBPJ9301D
Shivani Jain	ASOPB7742E
Divya Jain	AGCPM0147L
M/s Advik Finance & Properties Pvt. Ltd.	AAACA7209C

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**FACTS OF THE CASE IN BRIEF**

1. The shares of M/s Advik Laboratories Limited (hereinafter referred to as “**ALL**”) are listed at the Bombay Stock Exchange (hereinafter referred to as “**BSE**”). Due to abnormal increase in volume and price in the shares of ALL during the period from September 2003 to January 2004 (hereinafter referred to as “**investigation period**”), Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted investigation in trading in the scrip of ALL.

2. SEBI observed that (a) promoters of ALL (including Aditya Jain, Divya Jain, Shakuntala Jain, Kumud Jain, Rajkumar Jain, Vivek Jain, Shivani Jain and Advik Finance and Properties Private Limited), (b) entities related to and/or associated with the promoters of ALL (including Amit Pandya, Chirag Pujara, Manish Pancholi, Manoj Bhatiya, Rajesh Ram and Thomas Kutty) and (c) brokers (including Mansukhlal Upadhyay (424), Systematix Shares and Stocks (India) Limited (182), Ajmera Associates Pvt. Ltd. (911), Parivar Finance & Investments Ltd. (193), Pilot Credit Capital Ltd. (909), S.P.J. Stock Brokers Private Limited (646) and Shailesh M. Nissar (707) {hereinafter collectively referred to as “**Group**”} dealt in the scrip of ALL allegedly in violation of the provisions of various regulations made under the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”).
3. It was alleged that the promoters, viz., Aditya Jain, Divya Jain, Kumud Jain, Rajkumar Jain, Vivek Jain, Shivani Jain and Advik Finance and Properties Private Limited (hereinafter referred to as the “**Noticees**”) had traded in the scrip of ALL with the ‘Group’ and some of its trades were found to be synchronized amongst the ‘Group’. It was, therefore, alleged that the Noticees had violated the provisions of regulations 3 (a), (b), (c) and (d), 4 (1), 4 (2) (a), (b), (e) and (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 2003 (hereinafter referred to as “**PFUTP**”).
4. It was also alleged that the Noticees did not inform the company regarding the change in their shareholding to ALL and BSE. It was therefore, alleged that the Noticees had violated the provisions of regulations 7(1)(A) and 7(2) of SEBI (Substantial Acquisition of

Shares and Takeovers) Regulations, 1997 (hereinafter referred to as “**SAST**”).

### **APPOINTMENT OF ADJUDICATING OFFICER**

5. Mr. Piyoosh Gupta was appointed as Adjudicating Officer vide order dated August 06, 2007 under section 15 I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as ‘**Rules**’) to inquire into and adjudge the alleged violations of PFUTP and SAST committed by the Noticees.
6. Consequent upon the transfer of Mr. Piyoosh Gupta, the undersigned was appointed as the Adjudicating Officer vide order dated November 19, 2007.

### **SHOW CAUSE NOTICE, HEARING AND REPLY**

7. The details of the Show Cause Notice/s (hereinafter referred to as “**SCN**”) issued to the Noticees under rule 4(1) of the Rules to show cause as to why an inquiry should not be held against the Noticees and penalty be not imposed on the Noticees under sections 15HA and 15A (b) of SEBI Act for the alleged violation/s specified in the said SCN are given as under:

<b>Sl. No.</b>	<b>Name of Entity</b>	<b>Date of Show Cause Notice</b>	<b>RNI No. of Show Cause Notice</b>	<b>Violations</b>
1.	Vivek Jain	February 12, 2008	EAD-5/VSS/JR/116755/2008	Regulations 3(a) (b), (c) and (d), 4(1), 4(2)(a), (b), (e) and (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 and Regulations 7(1A) and 7(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.
2.	Rajkumar Jain	February 12, 2008	EAD-5/VSS/JR/116753/2008	Regulations 3(a) (b), (c) and (d), 4(1), 4(2)(a), (b), (e) and (g) of SEBI (Prohibition of Fraudulent

				and Unfair Trade Practices) Regulations, 2003 and Regulations 7(1A) and 7(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.
3.	Aditya Jain	February 12, 2008	EAD-5/VSS/JR/116747/2008	Regulations 3(a) (b), (c) and (d), 4(1), 4(2)(a), (b), (e) and (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 and Regulations 7(1A) and 7(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.
4.	Divya Jain	February 12, 2008	EAD-5/VSS/JR/116750/2008	Regulations 3(a) (b), (c) and (d), 4(1), 4(2)(a), (b), (e) and (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 and Regulations 7(1A) and 7(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.
5.	Kumud Jain	February 12, 2008	EAD-5/VSS/JR/116752/2008	Regulations 3(a) (b), (c) and (d), 4(1), 4(2)(a), (b), (e) and (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 and Regulations 7(1A) and 7(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.
6.	Shivani Jain	March 10, 2008	EAD-5/VSS/JR/119784/2008	Regulations 3(a) (b), (c) and (d), 4(1), 4(2)(a), (b), (e) and (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 and Regulations 7(1A) and 7(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.
7.	Advik Finance & Properties	March 10, 2008	EAD-5/VSS/JR/119779/2008	Regulations 3(a) (b), (c) and (d), 4(1), 4(2)(a), (b), (e) and (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 and Regulations 7(1A) and 7(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

8. The Noticees replied to the SCN vide letter dated April 30, 2008 denying the allegations. In the interest of natural justice and in order to conduct an inquiry as per rule 4 (3) of the Rules, the Noticees were granted an opportunity of personal hearing on July 31, 2008 at Securities and Exchange Board of India, Northern

Regional Office (hereinafter referred to as “**NRO**”), vide notice dated July 02, 2008. Mr. V.K. Jain and Ms. Deepika Vijay, Authorized Representatives of the Noticees (hereinafter referred to as “**AR**”) appeared. Vide letter dated November 15, 2008 the Noticees had submitted that they were applying for consent proceedings. The proceedings against the Noticees were kept in abeyance as they had applied for consent. However, vide letter dated October 12, 2009 the Noticees withdrew their consent application. Thereafter, the Noticees made further written submissions vide letter dated December 2, 2009 and March 26, 2010.

### **CONSIDERATION OF ISSUES AND FINDINGS**

9. The issues that arise for consideration in the present case are :
  - a) Whether the Noticee/s had violated regulations 3, 4 (1), 4 (2) (a), (b), (e) and (g) of PFUTP?
  - b) Does the violation/s, if any, on the part of the Noticee/s attract monetary penalty under section 15 HA of SEBI Act?
  - c) Whether the Noticee/s had violated regulations 7(1A) and 7(2) of SAST?
  - d) Does the violation/s, if any, on the part of the Noticee/s attract monetary penalty under section 15 A(b) of SEBI Act?
  - e) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?
10. Before moving forward, it will be appropriate to refer to the relevant provisions of PFUTP and SAST, which reads as under:

### **Prohibition of certain dealings in securities**

3. No person shall directly or indirectly-
- (a) buy, sell or otherwise deal in securities in 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 thereunder
  - (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 thereunder

### **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 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.

7(1A) Any acquirer who has acquired shares or voting rights in a company under sub-regulation (1) of regulation 11, shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where the shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.

- (2) The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two days of-
  - (a) the receipt of intimation of allotment of shares; or
  - (b) the acquisition of shares or voting rights, as the case may be.

11. The charges made against the Noticees, their submissions and my findings thereon are as under :

**(A) MANIPULATIVE TRADING**

**Allegation 1:** *The Company made several pre-mature and misleading announcements with the intention of creating an artificial demand in the market.*

**26/09/2003:** The Company vide its letter dated September 24, 2003 informed BSE (put on BSE website on September 26, 2003) that a Board Meeting would be held on October 01, 2003 to consider the proposals of buy back of shares, delisting of shares from the stock exchanges and proposed tie up with Max Medical UK. The volume in the scrip spurted from then onwards from 50 shares traded on September 25, 2003 to 12,101 shares traded on September 26, 2003. However, in the outcome of the Board Meeting, no information regarding the buy-back proposal was mentioned. However, subsequently, the company did not come out with a buy-back proposal and no information regarding acquisition by Max Medical UK was given by the company.

**1/10/2003:** The Company submitted the extracts of the Board Meeting to BSE and stated that Max Medical of UK showed interest to take 20% stake at a price of Rs.35/- per share and would invest up to a total of \$10 million in phases. The previous day's closing price of the share of ALL was Rs.20.68. However, subsequently, the company did not come out with any information regarding acquisition by Max Medical UK.

**01/11/2003 and 20/11/2003:** In two press releases, it was mentioned as, "company got a export order of Rs.62.00 crores from

4 countries to be executed within 6 months”, “research & development facilities are being set up”, “Company passed resolution enabling foreigners, foreign investors & FII to invest up to 40% of the paid up capital” and “Company is planning to open manufacturing /packing facilities at UAE to cater to middle east market”. However, subsequent developments in this regard were not made known by the company.

**Reply:** *In the year 2003 in consideration to our talks for UKMCA approval we got the export orders worth Rs. 62.00 Crores from M/s Qatar Medical International Co. (Qmedic), Qatar, M/s Wayne industries Ltd, Dubai & M/s Sinochem, Shanghai, though another major impediment was the Iraq war in 2003-04 because of which all the business activities thereof came to a standstill and entire Iraq economy was disrupted. As a result of such political and economic instability, the export orders were cancelled and could not be executed.*

**20/11/2003:** Company informed DSE about Board Meeting to be held on 29.11.03 to consider the tie up with Integral Pharma Sev. Ltd., UK and to discuss opening of offices in Brazil, Latin America as per FIEO offer to pharma industry. However, subsequent developments in this regard were not made known by the company.

**Reply:** *During the 1st week of November 2003, correspondences with Mr. Keith Plumb of M/s Integral Pharma Services, U.K. were exchanged by way of fax & telephonic discussions in respect of distribution of the Company's products to Brazil & Latin America through their U.K. office. Outline Proposal in the name of “Advik Laboratories - European Manufacturing and Product Licences” was forwarded to us on 11.11.2003 by Mr. Keith Plumb, which was accepted by the Company for supplying our products under their technical guidelines of manufacturing for Brazil & Latin America.*

*The Company was getting better business opportunities in the overseas market on the basis of impending UKMCA approval which would have*



*opened new export markets for the Company. In view of this plan, Advik was considering to tie-up with a well-networked marketing firm to gain a foothold in the African and Latin American markets.*

**24/11/2003:** Business Standard reported that Advik Laboratories had bagged an export order worth Rs.20 crores from Qmedic & Wayne LLC, UAE, for supply of generic drugs and multi-vitamins. However, subsequent developments in this regard were not made known by the company.

**25/11/2003:** ALL informed the BSE that it had launched Biosulph, a biotech product, after 3 years of analysis. Further, the company had also signed a memorandum of understanding with Embrax Corporation, Brazil, for marketing this product in Mexico and Latin America. However, subsequent developments in this regard were not made known by the company.

**Reply:** *To enter the biotech product market, during November 2003, Advik was in talks to takeover one of the largest plants in Western India for Biotechnology under the name & style of M/s Micro Plantae Ltd, situated at B-29, Abhimanshree Housing Society, NCL-Pashan Road, Pune. The Agreement had been primarily confirmed by both the concerns as per the layout plans finalized at Mumbai. This deal was brought through Mr. Vinit Kumar, representing M/s Venture Business Advisers P Ltd. (a Mumbai-based company) as he was also the Chairman & Managing Director of M/s Micro Plantae Ltd. Debit profile of the company was taken and as to the funding requirement in this regard, negotiations with The State Bank of Patiala (SBP) were in process. Further we were hopeful of the Max Medical tie-up which would have opened up alternative finance avenues for Advik.*

**23/12/2003:** The company informed DSE about Board Meeting to be held on 30.12.2003 to increase the capital base by way of capital infusion in the form of GDR, Foreign currency convertible

Bonds, preferential allotments, Rights etc. However, subsequent developments in this regard were not made known by the company.

**Reply:** *Advik was constantly striving towards achieving the goals as planned and wanted to gain maximum leverage from the business opportunities coming its way in the manner of UKMCA Approval, consequent tie-up with Max Medical, UK, export orders from various countries and marketing tie-ups and acquisition of M/s Micro Plantae Ltd. For all this, substantial amount of funds were required which would have materialized with the proposed equity participation by Max Medical. The Company was in the process of finalizing all the deals and realizing its targets, the UKMCA approval and the consequent tie up with Max Medical and its equity participation was one of the greatest avenues for Advik to pursue its plans. A lot was also dependent on the UKMCA certification which again was to be achieved with the assistance of Max Medical. Following the assent to pick up stake in the Company by Max Medical and that the UKMCA deal with them was pending conclusion, the matter of acquiring stake in the Company by them was to be taken up in the Board Meeting on 1.10.03 and a resolution in this regard was duly passed.*

*In February 2004, the Environmental Head of Max Medical, visited our plant and the surrounding areas and there he found emission of pollution (Air & Water) by the adjacent rubber tyre factory and the contract signing was deferred up to the solution of pollution problem from the rubber factory. Max Medical informed us that removal of pollution was a pre-requisite for obtaining the UKMCA certification and because of this, the UKMCA deal was kept at abeyance as approval of the same could not be obtained until the clearance of pollution problem.*

*Further as already mentioned, with regard to other developments like export orders, opening of offices abroad and investments and fund raising, all of them were in some way or the other, related to each other and specifically to UKMCA certification and the funds from Max Medical and those when the certification could not be obtained, suffered the laid back.*

*Another major impediment was the Iraq war in 2003-04 because of which all the business activities thereof came to a standstill and entire Iraq economy was disrupted. Because of such political and economic instability, the export orders were cancelled and could not be executed.*

*While we had no control over this incident, with the view to resolve the observation of the Environmental Head of Max Medical regarding the emission of pollutants by a tyre factory adjacent to the Company's plant, which would be a major hindrance in obtaining the UKMCA Certification, the issue was taken up with the Government of Haryana and a petition dated 26.4.04 had been filed in the High Court of Punjab & Haryana against State Government of Haryana, The Director of Industries, State Government of Haryana, Haryana Development Authority (HUDA), The Chairman, Haryana State Pollution Control Board, Haryana Financial Corporation, State Drugs Controller and Messrs Capital Auto Rubber Products (P) Ltd. at Chandigarh through our Legal Advisor, M/s J. C. Gupta & Co., New Delhi (Solicitors). The recourse of filing the petition had to be taken as the owner of the adjoining factory did not cooperate in the matter and the matter could be solved amicably despite various assurances given to us by the authorities.*

**Findings:** The announcements made by ALL were mainly in regard to three issues, viz., (1) buy-back of shares, (2) delisting of shares from stock exchanges and (3) various business development plans. ALL had not disputed the facts that it had informed the stock exchanges regarding the aforesaid issues as part of the agenda for the Board Meeting/s. I find that the Noticees have not submitted any reply with regard to buy-back and delisting of shares. The failure on the part of the Noticees to rebut the charges tantamounts to admittance. In this regard, I would like to rely upon the findings of the Hon'ble SAT in the matter of Classic Credit Limited Vs. SEBI (Appeal No. 68 of 2003 order dated December 8, 2006) regarding the significance of filing the reply to the SCN, in which it stated that *"the appellant did not file any reply to the second show cause notice. This being so, it has to be presumed that the charges alleged against them in*

*the show cause notice were admitted by them”. As regards the business development plans, ALL has submitted the reasons for the unsuccessful implementation of the same.*

However, I find that the inability of the company to proceed with the aforesaid three issues have not been communicated to the investors either directly or through the stock exchange. It is ironical that when ALL proposed the same, it promptly informed the investors through the stock exchanges but failed to do so when the plans could not be implemented. Thus, it communicated the positive news but not the negative news. ***Thus, the allegation that ALL made several pre-mature and misleading announcements with the intention of creating an artificial demand in the market for its securities stands established.***

**Allegation 2:** *Taking advantage of the aforesaid misleading corporate announcements and the resultant price rise Aditya Jain, Divya Jain, Shakuntala Jain, Kumud Jain, Rajkumar Jain, Vivek Jain, Shivani Jain and Advik Finance & Property Pvt Ltd. {collectively referred to as “promoters of ALL” and/or “persons acting in concert (PACs) with the promoters” / ‘promoter group’} have sold shares of ALL, during the investigation period.*

### **FINDINGS:**

S. no	Broker and Client Name	Gross Buy	Buy among group	Synch. . Buy among group	Gross Sell	Sell among group	Synch. . Sell among group
1	Broker-M.M.UPADH.-424						
Client	A-ADITYA JAIN- 40258	7049796	4586426	1256119	8360493	5355696	2443783
	B-DIVYA JAIN -14473	2188598	945095	325454	2249737	913832	560282
	C-SHAKUNTALA JAIN-7014	311686	10071	901	576855	15688	0
	D-AMIT PANDYA –A186	184761	89279	27672	300956	206274	131256
	TOTAL OF 1	9734841	5630871	1610146	11488041	6491490	3135321

2	Broker-SOUTH .SH. -182						
Client	A-CHIRAG PUJARA -P 203	8013902	5179816	1299909	7988531	3840323	1755379
	TOTAL OF 2	8013902	5179816	1299909	7988531	3840323	1755379
3	Broker-S.M. NISSAR -707						
Client	A-OWN A/C	8838029	6807265	4396063	8838021	6138041	1587432
	TOTAL OF 3	8838029	6807265	4396063	8838021	6138041	1587432
4	Broker-SHRIPAL JAIN -646						
Client	A-OWN A/C	6225397	3966721	1341766	6225397	2685519	1377505
	TOTAL OF 4	6225397	3966721	1341766	6225397	2685519	1377505
5	Broker-AJMERA ASSOC. – 911						
Client	A-KUMUD JAIN –K176	0	0	0	895768	458198	139344
	B-RAJKUMAR JAIN -R173	42000	33899	2000	377000	306757	135328
	C-VIVEK JAIN -V145	1208592	787544	228717	2564020	1657350	599206
	D-SHIVANI JAIN –S-571	165000	71261	38701	204054	129729	77322
	E-AMIT PANDYA -A186	132780	98525	12119	363328	310108	86950
	F-MAINSH PANCHOLI-M180	899544	707486	126282	887712	705421	53710
	TOTAL OF 5	2447916	1698715	407819	5291882	3567563	1091860
6	Broker-PARIVAR FIN. -193						
Client	A-MANOJ BHATIA-GEMB1	0	0	0	243000	139195	24890
	B-RAJESH RAM – GERR1	0	0	0	382426	271421	54334
	C-THOMAS KUTTY -GETK	0	0	0	269185	199865	34842
	D-ADVIK FIN. PVT. – GEAFP	0	0	0	20080	13250	8290
	TOTAL OF 6	0	0	0	914691	623731	122356
7	Broker-PILOT CREDIT CAP. – 909						
Client	A-CHIRAG PUJARA- 5507	28000	25049	5000	421333	0	0
	B-DIVYA JAIN – 6016	100000	38230	9150	300000	0	0
	C-ADVIK. FINANCE - 4523	0	0	0	500000	0	0
	TOTAL OF 7	128000	63279	14150	1221333	0	0
	GRAND TOTAL	35388085	23346667	9069853	41967896	23346667	9069853
	% TO MARKET VOLUME	58.54	38.62	15	69.43	38.62	15

- The above promoters and their related/connected clients and brokers altogether purchased 3,53,88,085 shares and sold 4,19,67,896 shares, which accounted for around 58.54% and 69.43% respectively of the total volumes during the investigation period. These entities sold 65,79,811 shares on net basis, which accounted for 99.60% of the total net sales during the investigation period and also 70.35% of the share capital of the company, which is almost similar to the change reflected in shareholding pattern of promoters/ persons acting in concerts

*during the December, 2003 quarter.*

- *The above promoters, clients and brokers traded 66% of their trades amongst one another and 35% of above group trades were synchronized which is 15% of gross market trade.*
- *The promoters started dealing in the scrip i.e. buying and selling after the announcement of the buy-back and tie up with Max Medical (September 26, 2003) and sold around 16% of their net sales after the announcement of export order (November 24, 2003) and launch of the new product (November 25, 2003) and around 70% of the net sales during the period December 15, 2003 to December 31, 2003, when the price had reached its high.*
- *From the off market transactions, it was observed that Vivek Jain had transferred 6,00,000 shares on October 10, 2003 to Amit Pandya and Amit Pandya transferred 2,52,000 shares to Chirag Pujara on November 19, 2003 and November 26, 2003. It is also observed that Divya Jain had transferred 6,00,000 shares to Amit Pandya on December 13, 2003. Thus, it is clear that Chirag Pujara was acting in concert with the promoter/ company related entities.*
- *It was further observed that 9,00,000 shares by Shri Aditya Jain and 4,00,000 shares by Shri V. K. Jain had been transferred to the beneficiary account of the member Mansukhlal Upadhyay (424) on September 25, 2003.*
- *73% trades of Member S. M. Nissar and 53.43% trades of Member Shripal Jain were with above group. Out of which 33.85 % trade of*

*Member S. M. Nissar and 21.84% trade of Member Shripal Jain were synchronized with the above group.*

- *Member S. M. Nissar earned nominal profit of Rs, 5.8 lac on trading of Rs 47.23 crores and Member Shripal Jain incurred loss of Rs 1.91 lakhs on trading of Rs. 34.30 crore during investigation period. Before investigation period (during September 1, 2003 to September 25, 2003), daily average volume in the scrip was 436 shares. Member S. M. Nissar entered / started trading in his own account from October 13, 2003 and Member Shripal Jain started trading in own account from. October 10, 2003. During the investigation period, total volume before these two members started trading, from 26.9.03 to 9.10.03, was 385736 shares (average per day 42,859 shares), out of which transactions of the promoter Aditya Jain were for 2,11,864 shares. The average daily volume after entry of these two brokers increased sharply to 9,68,770 shares.*
- *238 trades were executed at a price higher by Rs.0.25 or more than last traded price. Promoters Mr. Aditya Jain and Divya Jain were involved in 45 and 8 such trades respectively. Similarly, Mr. Chirag Pujara, Brokers S.M. Nissar (on own a/c) and Shripal Jain (on own a/c) were involved in 36, 9 and 7 such trades respectively. Thus, these 5 entities affected the price 105 times out of total 238 times and also created artificial volume through synchronized trading among themselves.*
- *Manish Pancholi was the introducer in the know your client forms of broker Ajmera and used to place orders on behalf of all the promoters/associates.*

12. I find that the 'Group', as a whole, had purchased 3,53,88,085 shares and sold 4,19,67,896 shares, which accounted for around 58.54% and 69.43% respectively, of the total volume during the investigation period. Thus, the 'Group', had net sold 65,79,811 shares, which accounted for 99.60% of the total net sales during the investigation period. These net sales also constituted almost 70.35% of the share capital of ALL. Further, this is almost similar to the change reflected in the shareholding pattern of the promoters of ALL and/or entities related/connected to the promoters of ALL for the quarter ended December 2003.
13. I find that the seven brokers viz. Mansukhlal Upadhyay, Systematix Shares and Stocks (India) Limited, Ajmera Associates Pvt. Ltd., Parivar Finance and Investments Ltd., Pilot Credit Capital Ltd, Shripal Jain and Shailesh M Nissar entered into trades with one another for 3,13,59,519 shares, either on their proprietary account and/or for their clients, which accounted for 51.88% of the quantity traded during the investigation period.
14. The Noticees traded in the shares of ALL amongst one other as per the following details:



STATEMENTS OF TRADES AMONG PROMOTERS RELATED CLIENTS AND BROKERS SHOWING THEIR COUNTERPARTY CONCENTRATION (ON GROSS BASIS)																		
Sum of qty.	SELL CL. SPEC. CODE																	
BUY CL. SPEC. CODE	1A	1B	1C	1D	2A	3A	4A	5A	5B	5C	5D	5E	5F	6A	6B	6C	6D	Grand Total
1A	89498			3750	1039670	2076107	515352	6222	45211	232850		106950	247833	16050	104156	102277	500	4586426
1B		9966			163591	492680	198178	9320		3000	1512		35901	23228			7719	945095
1C						9871	200											10071
1D	200			5000	47135	19484	13410						1850			2000	200	89279
2A	1992094	94162		29316	62127	1511422	358712	101321	39950	409335	68350	164253	218772	16527	68296	45179		5179816
3A	2115255	413817	10000	24095	1603613	135674	1263015	149119	118926	796330	19679	18605	42776	17877	46059	29344	3081	6807265
4A	817743	361947	5688	9100	494750	1347661	160090	172216	99670	206242	35188	14000	144876	51513	31437	12850	1750	3966721
5B	582					15217	18100											33899
5C	59246			107000	136290	413816	54130		3000				2462	9000	1612	988		787544
5D	4876				15000	38885							10000		2500			71261
5E	13448			25300	25267	30159	2900						951		200	300		98525
5F	239355	24790		2713	245686	24829	101432	20000		9593	5000	5000		5000	17161	6927		707486
7A	23399					350						1300						25049
7B		9150			7194	21886												38230
Grand Total	5355696	913832	15688	206274	3840323	6138041	2685519	458198	306757	1657350	129729	310108	705421	139195	271421	199865	13250	23346667
N.B. :- CLIENT SPECIAL CODES ARE AS PER CODES MENTIONED IN THE TABLE AT PAGE 11 OF THE ORDER																		

STATEMENTS OF TRADES AMONG PROMOTERS RELATED CLIENTS AND BROKERS SHOWING THEIR COUNTERPARTY CONCENTRATION																	
Sum of qty.	SELL CL. SPEC. CODE																
BUY CL. SPEC. CODE	1A	1B	1D	2A	3A	4A	5A	5B	5C	5D	5E	5F	6A	6B	6C	6D	Grand Total
1A	17708			332622	546085	216500			61240		42800	15515	6050	10550	7049		1256119
1B				80423	183164	47879						5000	4228			4760	325454
1C					901												901
1D			500	26200	572	200										200	27672
2A	497015	46419	11250	3755	370606	132484	20815	18800	90425	46265	24801	19845	1900	10015	5514		1299909
3A	1486181	301129	11256	996844	61359	894013	102429	84377	387757	12908	11949	3300	6997	22393	11591	1580	4396063
4A	365161	195994	500	230134	322864	62116	16100	32151	54784	18149	7400	10050	5715	10548	8350	1750	1341766
5B					2000												2000
5C	30159		100000	28100	67642	1500								328	988		228717
5D				15000	23701												38701
5E	66		5500	3600	2500	453											12119
5F	42493	7590	2250	38701	6038	22360			5000					500	1350		126282
7A	5000																5000
7B		9150															9150
Grand Total	2443783	560282	131256	1755379	1587432	1377505	139344	135328	599206	77322	86950	53710	24890	54334	34842	8290	9069853
N.B. :- CLIENT SPECIAL CODES ARE AS PER CODES MENTIONED IN THE TABLE AT PAGE 11 OF THE ORDER																	

15. I also find that the Noticees carried out synchronized transactions with various entities with an intent to create an artificial market in the shares of ALL. The details of some of such synchronized transactions are as under:

**ANALYSIS OF SYNCHRONIZED SALE TRANSACTIONS – MANOJ BHATIA**

S. No.	Transaction Date		Counterparty				
	From	To	Client Code	Client Name	No of Trades	Volume	%
1.	November 7, 2003	December 3, 2003	B707	S.M. Nissar	8	6997	28.11
2.	November 18, 2003	November 27, 2003	40258	Aditya Jain	7	6050	24.31
3.	October 17, 2003	November 28, 2003	3002	NA	19	5715	22.96
4.	November 7, 2003	November 7, 2003	14473	Divya Jain	9	4228	16.99
5.	October 24, 2003	November 3, 2003	P203	Chirag Pujara	4	1900	7.63
<b>Total</b>						<b>24890</b>	<b>100</b>

**ANALYSIS OF 'PURCHASE' TRANSACTIONS- AJMERA ASSOCIATES PVT. LTD.**

S.No.	Transaction Date		Counter Party			No of Trades	Quantity	% to Synchronized Trades
	From	To	Client Code	Client Name	Member			
1	October 24, 2003	November 13, 2003	40247	*****	M.M.Upadhyay	130	107750	26.42
2	May 11, 2003	December 30, 2003	B707	S.M.Nissar	S.M.Nissar	99	101881	24.98
3	October 14, 2003	December 30, 2003	P203	Chirag Pujara	Systematix Shares and Stocks (India) Ltd.	75	85401	20.94
4	October 15, 2003	December 12, 2003	40258	Aditya Jain	M.M.Upadhyay	67	72718	17.83
5	December 15, 2003	December 26, 2003	3002	Shripal Jain	Shripal Jain	18	22360	5.48
6	December 19, 2003	December 30, 2003	14473	Divya Jain	M.M.Upadhyay	6	7590	1.86
7	December 15, 2003	December 15, 2003	V145	Vivek Jain	Ajmera Associates Pvt. Ltd.	2	5000	1.23
8	Vovember 7, 2003	December 1, 2003	GETK	Thomas Kutty	Parivar Finance	7	2338	0.57
9	October 10, 2003	December 1, 2003	3001	Shripal Jain	Shripal Jain	5	1953	0.48
10	October 14, 2003	December 1, 2003	GERR1	Rajesh Ram	Parivar Finance	6	828	0.20
<b>Total</b>						<b>415</b>	<b>407819</b>	<b>100.00</b>

**ANALYSIS OF 'SALE' TRANSACTIONS – AJMERA ASSOCIATES PVT. LTD.**

S. No.	Transaction Date		Counter Party			No of Trades	Quantity	% of Synchronized Trades
	From	To	Client Code	Client Name	Member Name			
1.	November 13, 2003	January 1, 2004	B707	S.M.Nissar	S.M.Nissar	457	602720	55.20
2.	October 15, 2003	December 24, 2003	P203	Chirag Pujara	Systematix Shares and Stocks (India) Ltd.	389	220951	20.24
3.	November 25, 2003	December 30, 2003	3002	Shripal Jain	Shripal Jain	221	128650	11.78
4.	July 10, 2003	December 16, 2003	40258	Aditya Jain	M.M.Upadhyay	94	119555	10.95
5.	November 19, 2003	December 26, 2003	3001	Shripal Jain	Shripal Jain	15	9984	0.91
6.	December 30, 2003	December 30, 2003	14473	Divya Jain	M.M.Upadhyay	10	5000	0.46
7.	December 15, 2003	December 15, 2003	M180	Manish Pancholi	Ajmera Associates Pvt. Ltd.	2	5000	0.46
<b>Total</b>						<b>1188</b>	<b>1091860</b>	<b>100.00</b>

**ANALYSIS OF SYNCHRONIZED TRANSACTIONS – RAJESH RAM**

S. No.	Transaction Date		Counterparty				
	From	To	Client Code	Client Name	No of Trades	Volume	%
1.	November 3, 2003	December 4, 2003	B707	S.M. Nissar	62	22393	41.21
2.	November 3, 2003	December 3, 2003	40258	Aditya Jain	20	10550	19.42
3.	October 17, 2003	December 1, 2003	P203	Chirag Pujara	98	10015	18.43
4.	December 3, 2003	December 3, 2003	3002	NA	29	8548	15.74
5.	November 17, 2003	December 3, 2003	3001	NA	5	2000	3.68
6.	October 14, 2003	October 14, 2003	M180	Manish Pancholi	5	500	0.92
7.	December 1, 2003	December 1, 2003	V145	Vivek Jain	1	328	0.60
<b>Total</b>						<b>54334</b>	<b>100</b>

### ANALYSIS OF 'PURCHASE' TRANSACTIONS – SHRIPAL JAIN

Serial No	Trading Period		Counterparty		No of Tran saction s	No of shares	% to synchronise d trade
	From	To	Code	Client			
1.	10-Oct-03	19-Dec-03	40258	Aditya Jain	416	365161	27.42
2.	14-Nov-03	5-Jan-04	B707	S.M. Nissar	551	322864	24.24
3.	17-Oct-03	2-Jan-04	P203	Chirag Pujara	437	230134	17.28
4.	22-Dec-03	2-Jan-04	14473	Divya Jain	155	195994	14.72
5.	1-Dec-03	26-Dec-03	V145	Vivek Jain	83	54784	4.11
6.	12-Nov-03	2-Jan-04	3002	self	61	41151	3.09
7.	8-Dec-03	9-Dec-03	R173	Rajkumar Jain	57	32151	2.41
8.	17-Nov-03	5-Jan-04	3001	self	46	20965	1.57
9.	2-Dec-03	30-Dec-03	S571	Shivani Jain	26	18149	1.36
10.	17-Nov-03	3-Dec-03	GERR1	Rajesh Ram	34	10548	0.79
11.	19-Nov-03	19-Dec-03	M180	Manish Pancholi	16	10050	0.75
12.	17-Nov-03	27-Nov-03	GETK	Thomas Kutty	26	8350	0.63
13.	1-Dec-03	1-Dec-03	A186	Amit Pandya	12	7400	0.56
14.	22-Dec-03	24-Dec-03	K176	Kumud Jain	41	6100	0.46
15.	18-Dec-03	23-Dec-03	GEMB1	Manoj Bhatiya	19	5715	0.43
16.	2-Jan-04	2-Jan-04	GEAFP	Advik Finance and Properties Private Limited	16	1750	0.13
17.	8-Dec-03	8-Dec-03	40247	N.A.	1	500	0.04
	TOTAL SYNCHRONISED					1331766	100.00
TOTAL PURCHASE					6225297		

### ANALYSIS OF 'SALE' TRANSACTIONS – SHRIPAL JAIN

Serial No	Trading Period		Counterparty		No of Transactions	No of shares	% to synchronised trade
	From	To	Code	Client			
1.	14-Nov-03	5-Jan-04	B707	S.M. Nissar	886	894013	64.90
2.	13-Nov-03	24-Dec-03	40258	Aditya Jain	230	216500	15.72
3.	6-Nov-03	1-Jan-04	P203	Chirag Pujara	251	132484	9.62
4.	23-Dec-03	2-Jan-04	14473	Divya Jain	50	47879	3.48
5.	12-Nov-03	2-Jan-04	3001	Self	60	40638	2.95

6.	15-Dec-03	26-Dec-03	M180	Manish Pancholi	18	22360	1.62
7.	17-Nov-03	5-Jan-04	3002	Self	47	21478	1.56
8.	1-Dec-03	1-Dec-03	V145	Vivek Jain	2	1500	0.11
9.	10-Oct-03	10-Oct-03	A186	Amit Pandya	3	453	0.03
10.	6-Nov-03	6-Nov-03	40247	N.A.	2	200	0.01
<b>TOTAL SYNCHRONISED</b>						<b>1377505</b>	100.00
<b>TOTAL SALE</b>						<b>6225397</b>	

**ANALYSIS OF SYNCHRONIZED SALE TRANSACTIONS – THOMAS KUTTY**

S. No.	Transaction Date		Counterparty				
	From	To	Client Code	Client Name	No of Trades	Volume	%
1.	November 7, 2003	December 3, 2003	B707	S.M. Nissar	28	11591	33.27
2.	November 18, 2003	November 27, 2003	3002	NA	25	7850	22.53
3.	October 24, 2003	November 3, 2003	40258	Aditya Jain	3	7049	20.23
4.	October 17, 2003	November 28, 2003	P203	Chirag Pujara	13	5514	15.83
5.	November 7, 2003	November 7, 2003	M180	Manish Pancholi	5	1350	3.87
6.	December 1, 2003	December 1, 2003	V145	Vivek Jain	2	988	2.84
7.	November 17, 2003	November 17, 2003	3001	NA	1	500	1.43
<b>Total</b>					<b>77</b>	<b>34842</b>	<b>100</b>

16. The Hon'ble SAT 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 the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available. In the case of *Ashok K Chaudhary v SEBI*, Appeal No 69 of 2008, dated November 5, 2008, the Hon'ble SAT observed that large number of reverse trades raises a presumption of manipulative transactions. In *Nirmal Bang Securities Pvt. Ltd Vs Chairman, SEBI*, Appeal No. 54-57/2002, dated October 31, 2003,

the Hon'ble SAT observed that where there are too many transactions over a period of time giving an impression that these were all synchronized, the argument that the parties had no means of knowing whether any entity controlled by the client is simultaneously entering any contra order elsewhere for the reason that in the online trading system, confidentiality of counter parties is ensured, is untenable.

17. The transactions as pointed out in the table/s earlier and spread over a period of time are definitely done with some inbuilt component of 'intent' involved. Greater the number of synchronized trades, the larger is the chances of trades not being genuine in nature, which is bound to affect the market equilibrium. A trade can be executed on the screen and still be manipulative in nature. Considering the number of such trades, it is clear that there has been a gross mis-use of the screen based trading system. It is also to be stated that "intention" is inherent in all cases of synchronized trading involving large scale price manipulation and the same was also brought out in the earlier cited case of *Nirmal Bang Securities (P) Ltd. vs SEBI* by the Hon'ble SAT whereby it was observed that "*Intention is reflected from the action of the Appellant. Choosing selective time slots does not appear to be an involuntary action.*" Thus, the very act of executing so many synchronized trades in the scrip of ALL on the part of the Noticees is revealed in his acting in tandem with other entities in the group, which reveals the inherent intention of manipulating the trading in the said scrip. It is quite evident that these synchronized trades were entered into due to the concerted effort of the Noticee vis-à-vis the other entities, which ensured a resemblance of normal trading activity.

18. When the trading pattern of an entity reveals a clear and set pattern/behavior in a particular scrip, such as, execution of a large number of trades, in the same scrip, consistently throughout the period and with the same set of entities, the same is indicative of a concerted level of activity and a definite finding that there was an element of intent while executing the said deals, precipitated due to a mutual understanding, which aspect can be pointed out by any layman / an ordinary investor, leave apart the regulatory authorities. The acts of the entities speak of their intentions. In case an entity is alleged to have manipulated the market or distorted the market equilibrium in terms of the PFUTP and their acts are corroborated up to a certain extent by the investigation findings, then the underlying intention of the said entity is brought out.
19. It is observed from the foregoing that by taking advantage of the premature and misleading announcements made by ALL, the Noticees carried out synchronized transactions and created artificial market in the trading in the shares of ALL. Consequently, the Noticees, collectively, offloaded 49,82,335 shares constituting 53.27% of the share capital of the company.
20. ALL was and is an illiquid stock. Only shareholders having a substantial stake could have sold these many shares in a short span of 5 months. The facts of the case lead to the conclusion that the Noticees being part of the promoter group of ALL directly as well as indirectly with the candid support of other entities in the Group executed the sinister gameplan of the market manipulation to its precision. In the case of *Gaurav Shah v Whole Time Member, SEBI*, Appeal No 78 of 2008 dated December 17, 2008, the Hon'ble SAT has observed that *"When the promoters of a company through their own front entities start manipulating their own scrip, the charge is*



*more serious and those who act in concert with them are equally responsible.”*

21. In order to establish the fraudulent nature of trades indulged in by the Noticees reference may also be made to the definition of fraud laid down in regulation 2 (1) (c) of the PFUTP, which reads as follows:

*"2 (1)(c) "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, ... .."*

22. Regulation 4(2)(a) of PFUTP, inter alia, prohibits a person from indulging in an act which creates false or misleading appearance of trading in the securities market. Regulation 4(2)(b) of PFUTP, inter alia, prohibits dealings in a security intended to operate as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gains. Regulation 4(2)(e) of PFUTP prohibits a person to act in a way to manipulate the price of the security. Regulation 4(2)(g) of PFUTP prohibits a person from entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security.
23. In view of the foregoing, I am of the view that the facts of the present case clearly bring out the ominous role played by the Noticees in indulging in an element of fraud and unfair trade practices in the game plan of manipulation. This is also evident from the fact that the Noticees bought 1,10,65,672 shares and sold 1,60,48,007 shares and thus, sold a net quantity of 49,82,335 shares of the company during the investigation period constituting

53.27% of the share capital of the company, 8.24% of the gross traded quantity and 75% of the net sales during the investigation period. This conclusively establishes the allegation that the Noticees transacted in the shares of ALL in such a manner that led to creation of artificial volumes in the scrip and was designed to create a false market leading to significant price movement in the scrip.

24. I, therefore, hold that the Noticee had violated the provisions of regulations 3 (a), (b), (c), (d), 4(1), 4(2) (a), (b) (e) and (g) of PFUTP.
25. The Hon'ble Supreme Court of India in the 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...*”.
26. Thus, the aforesaid violations by the Noticees make them liable for penalty under Section 15HA of SEBI Act, 1992 which read as follows:

**“Penalty for fraudulent and unfair trade practices**

*15HA. 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.*

**(B) NON-DISCLOSURE OF SHAREHOLDING**

**Allegation 3:** The shareholding pattern as disclosed by ALL to BSE for the quarters ended on September 30, 2003 and December 31, 2003 was as under:

	December 2003		September 2003	
Category	Number of Shares	%	Number of Shares	%
Indian Promoters	1156500	12.36	3024900	32.34
Foreign Promoters			17611	0.19
Private Corporate Bodies	2214187	23.67	980632	10.48
Indian Public	5332577	57.01	5330257	56.99
Clearing Member	627956	6.71		
<b>Grand Total</b>	<b>9353400</b>	<b>100</b>	<b>9353400</b>	<b>100</b>

The Noticees reduced their holdings by 18,68,400 shares i.e. from 32.34% to 12.36% during the quarter ended December 2003. The Noticees had failed to inform the company and the stock exchange/s about the change in the shareholding as per the provisions of Regulations 7(1A) read with 7(2) of SAST.

**Reply:** *In this regard we would like to submit that the promoters had duly informed the Company about the change in their shareholding as per the SAST Regulations 1997. It was the duty of the Company Secretary, Mr. Sanjib Jha to make due disclosures to the Stock Exchanges as required which he failed to make and did not inform us about his inaction. As substantiated earlier, on an enquiry at a later stage, it was found that he was a fake person. Thus, in view of the fact that the non-disclosure was not on the part of the promoters or Company but on the part of Mr. Sanjib Jha and hence it is herein requested to take a lenient view. In this regard it is further submitted that the documents are no more available with the Company as the same were destroyed in the water logging in the basement office.*

**Findings:** I find that the Noticees could not submit any documentary proof in regard to the disclosure reportedly made by them to the company under regulations 7(1A) and (2) of SAST due to the natural calamities. I have perused the documents submitted by the Noticees in support of their submissions. I find the following in the Investigation Report (Page 7):

*On our query, the company informed that the promoters of the company duly informed the company of the change in their shareholdings as per SEBI (PIT) Regulations, 1992 and SEBI (SAST) Regulations, 1997 but all these documents / records were destroyed / got lost by them in a huge fire in their factory premises in Sohna, Gurgaon. They also submitted copy of fire report issued by fire station office. Further, due to water logging pursuant to torrential rains in Delhi during the year 2005, all the related documents of promoters stored in the basement of the residence of the promoters were also destroyed / defaced. They also submitted copy of FIR lodged. However, the BSE confirmed that no disclosures were filed with the Exchange with regard to reduction of the holdings of the promoters and related entities.*

Further, based on the aforesaid communication of BSE, separate adjudication proceedings have been initiated against the company for failure to disclose the change in shareholding after receipt of the same from the shareholders resulting in non-compliance of regulations 7(3) of SAST and 13 (6) of PIT by the company. I am of the view that violation of regulations 7(1A) and (2) of SAST by the Noticees and 7(3) of SAST by the company, cannot co-exist.

In the light of the above, I find merit in their submissions and hold that the alleged violation of regulations 7(1A) and (2) of SAST is not established.

**(C) DETERMINATION OF QUANTUM OF PENALTY**

27. While determining the quantum of penalty under section 15HA, it is important to consider the 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 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.”*

28. Due to the manipulation in the scrip of ALL which was engineered by the Noticees as detailed above, genuine investors were attracted to trade in the shares of ALL. The liquidity/volumes in particular scrip raise the issue of ‘demand’ in the securities market. The greater the liquidity, the higher is the investors’ attraction towards investing in that scrip. Hence, anyone could have been carried away by the unusual fluctuations in the 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. The shares of ALL are not frequently traded in the market today. Thus, the shares of ALL which are left in the hands of the gullible investors who got trapped in the aforesaid sinister game plan, are nothing but junk shares. The genuine investors who had bought these shares have no exit route today. The investors had to suffer substantial amount of loss on account of the manipulation. Though it may not be possible to ascertain the exact quantum of monetary loss to the investors, the interest of investors has been jeopardized on account of the grievous act of

the Noticee. The entities that indulge in manipulative, fraudulent and deceptive transactions and/or abet carrying out such transactions should be suitably penalized for the said acts of omissions and commissions.

29. I have noted the submissions of the Noticees that the entire manipulation was done by the brokers. In support of this charge, the Noticees have submitted that they did not have the knowledge of interconnection between the other members of the Group except for the common person Mr. Manish Pancholi who introduced the Noticees to the brokers. The Noticees had transferred the shares to the account of the brokers as and when asked for and not in consonance with the sales. There were distinct time gap between the transfer of shares into the broker's account and actual trading of the said shares. The Noticees were never provided with any contract notes and ledger accounts. The Noticees had transferred the shares to the brokers only with the direction of selling them in the market. However, the brokers at their own will were also buying shares of ALL in the name of the Noticees. The Noticees have further submitted that as per the arrangement with the brokers with regard to the trading in the shares of ALL by them, out of the sale proceeds received from the brokers, the Noticees retained a sum of Rs.8/- per share and transferred/returned the balance to certain entities as advised by the brokers, partly in cash and partly through cheques. In support of having returned the said sum to the associates of the brokers, the Noticees have submitted the following payment details:

**Details of payments made from HDFC A/c**

Date	Particulars	Amount		
	Name	Through	Cheque No.	Issued
15.12.2003	Ganpati Enterprises	T/f to Mulund branch 143230003829	370017	2500000
16.12.2003	Ganpati Enterprises	T/f to Mulund branch 143230003829	370018	2500000
17.12.2003	Ganpati Enterprises	T/f to Mulund branch 143230003829	370019	2500000
18.12.2003	Ganpati Enterprises	T/f to Mulund branch 143230003829	370020	2500000
19.12.2003	Ganpati Enterprises	T/f to Mulund branch 143230003829	370021	2500000
20.12.2003	Ganpati Enterprises	T/f to Mulund branch 143230003829	370022	2500000
20.12.2003	Ganpati Enterprises	T/f to Mulund branch 143230003829	370003	2500000
22.12.2003	Ganpati Enterprises	T/f to Mulund branch 143230003829	370004	2500000
22.12.2003	Shree Balajee Enterprises	cleared through HV	370023	2500000
24.12.2003	Doshi Trading Co.	T/f to Mulund branch 0152000006123	370006	3000000
24.12.2003	Doshi Trading Co.	T/f to Mulund branch 0152000006123	370010	2000000
24.12.2003	Doshi Trading Co.	T/f to Mulund branch 0152000006123	370025	2500000
24.12.2003	Ganpati Enterprises	T/f to Mulund branch 143230003829	370005	2000000
24.12.2003	Ganpati Enterprises	T/f to Mulund branch 143230003829	370007	2400000
24.12.2003	Shree Balajee Enterprises	cleared through HV	370009	2000000
25.12.2003	Ganpati Enterprises	T/f to Mulund branch 143230003829	370008	2600000
26.12.2003	Doshi Trading Co.	T/f to Mulund branch 0152000006123	370026	2500000
26.12.2003	Mohini Sales Corporation	cleared through HV	370011	1000000
07.01.2004	Deeput Holding & Finance Ltd.	cleared through HV	370026	10000000
Total				5,25,00,000

I have perused the copy of the bank statements submitted by the Noticees showing the aforesaid transfers. However, the Noticees have not submitted any documentary evidence in support of their submission that these entities belong to or related to the brokers.

30. I am of the view that passing the blame totally on the brokers for the manipulation in the trading in the shares of ALL by the Noticees, to say the least, is childish. The Noticees have admitted that the Noticees have collectively transferred 63,77,535 shares of ALL to the brokers during the period from September 25, 2003 to December 27, 2003 (source: table 3 – Annexure B – Noticees' letter dated December 2, 2009). This establishes the fact that the admitted manipulation would not have been possible but for the

active participation of the Noticees. Therefore, the submissions of the Noticees that brokers were only responsible for the manipulation are devoid of merit.

31. I have also noted the submissions of the Noticees that ALL had an outstanding loan of Rs.698.18 lakhs to State Bank of India and Haryana Financial Corporation. The proceeds received from sale of shares of ALL by the Noticees through this sinister game of manipulation have been used to discharge the aforesaid obligations of ALL. The Noticees have submitted that ALL had paid Rs.164.50 lakh to Haryana Financial Corporation and Rs.399.75 lakh to State Bank of India towards full and final settlement of the outstanding dues. In this regard, the Noticees have submitted the documentary evidence, such as, receipt issued by HFC and SBI acknowledging the clearance of dues. I have perused the same and find that the submissions of the Noticees are in order. However, I am of the view that the objective and the purpose of utilizing the sale proceeds for repayment of loan may be reasonable but the modus operandi used for raising the sum was unlawful as detailed above. Thus, the means adopted to achieve the end was dubious, manipulative, unfair and fraudulent which need to be dealt with an iron hand.

### **ORDER**

32. After taking into consideration all the facts and circumstances of the case, I impose a penalty of Rs.50,00,000/- (Rupees Fifty Lakh only) under section 15HA of SEBI Act on the Noticees which will be commensurate with the violation/s committed by them. The Noticees shall be jointly and severally liable to pay the said monetary penalty.



33. The Noticee shall pay the said amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Ms. Pradnya Sarvade, Officer on Special Duty, Investigations Department, SEBI, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
34. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: **March 30, 2010**

Place: **MUMBAI**

**V.S.SUNDARESAN**  
**ADJUDICATING OFFICER**