

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. VSS/AO- 189/2009]

**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

Satish Ramswaroop Panchariya

(PAN. ADRPP1806H)

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted investigation in the trading in the scrip of Alka India Limited (hereinafter referred to as “**AIL/Company**”) for the period from August 14, 2003 to March 26, 2004 (hereinafter referred to as “**investigation period**”).
2. The shares (face value – Re.1/- per share) of the Company are listed on Stock Exchanges of Mumbai (hereinafter referred to as “**BSE**”), Ahmedabad (hereinafter referred to as “**ASE**”), Saurashtra and Kutch (hereinafter referred to as “**SKSE**”) and Jaipur (hereinafter referred to as “**JSE**”). It was observed that no transaction in the said scrip was reported at ASE and JSE during

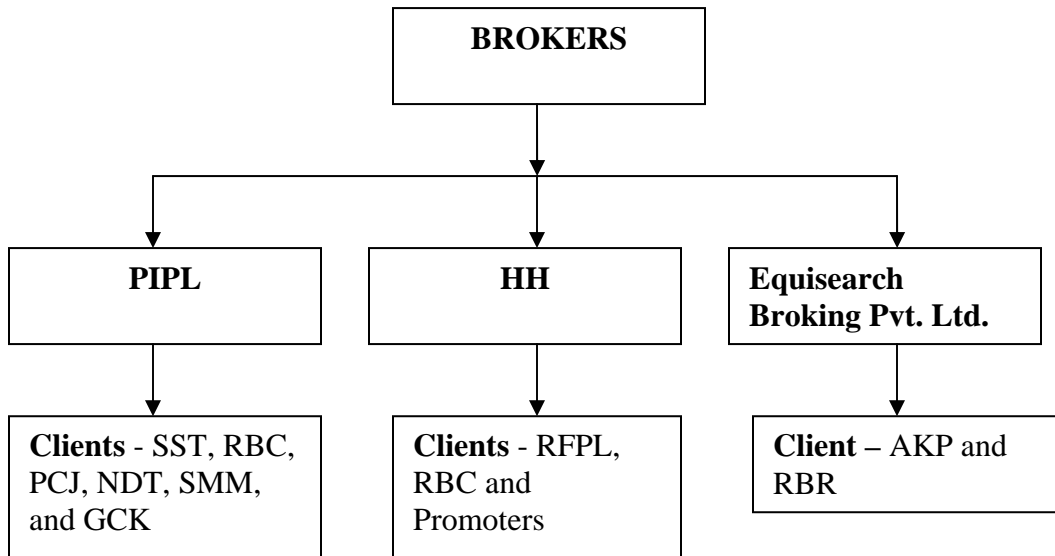
the investigation period. Hence, for the purpose of investigation the trades done at BSE were only considered.

3. The price of the shares of AIL decreased gradually over a period of 8 months from Rs.2.34 (August 14, 2003) to a low of Re. 0.28 (March 23, 2004), in 157 trading days at BSE.
4. It was alleged that certain corporate announcements including better quarterly results along with some other premature misleading positive announcements like acquisition of units, export orders, dividend, preferential allotment, etc., were made with an intent to allure the investors and create artificial liquidity in the scrip so that the Promoters/its related entities and other entities could off-load their shares in the market. Brokers, viz., Parklight Investments Pvt. Ltd. and M/s Harikishan Hiralal, also assisted the promoter/its related entities/other entities to offload shares by creating artificial demand in the scrip by placing large buy orders at very low prices and later deleting them.
5. The entities alleged to have been involved in the said manipulation are as under:

S.No	Abbreviation	Names	Category
1.	PIPL	Parklight Investments Pvt. Ltd.	Broker
2.	HH	Harikishan Hiralal	Broker
3.	SRP	Satish Ramswaroop Panchariya	Promoter
4.	AP1	Arun R Panchariya	Promoter
5.	AP2	Ashok R B Panchariya	Promoter
6.	RP1	Ramswaroopji B Panchariya	Promoter
7.	RP2	Radha S Panchariya	Promoter
8.	SP1	Saritadevi Panchariya	Promoter
9.	SP2	Shantadevi R Panchariya	Promoter
10.	DUD	Durgaram Umaram Dudi	PAC
11.	KJP	Kailashben J Patel	PAC
12.	CSL	Cavalier Securities Ltd.	Promoter related entity
13.	PTIL	Panchariya Textile Industries Ltd.	Promoter related entity

14.	NVS	Nilesh Vinodchandra Sheth	Other entity
15.	HCM	Hitendra Chaturbhai Makwana	Other entity
16.	RBC	Ratnaram Bhavraram Choyal	Other entity
17.	RBR	Ratnaram B Rabari	Other entity
18.	PCJ	Pravin C Jain	Other entity
19.	SMM	Shivram Motilal Meena	Other entity
20.	GCK	Giridharbhai Chaiturao Karu	Other entity
21.	AKP	Ashwin K Patel	Other entity
22.	RVJ	Rajput Vikramsingh Jaggusingh	Other entity
23.	SST	Sanjay Shankarlal Thakkar	Other entity
24.	NDT	Narendra D Tiwari	Other entity
25.	RFPL	Right Finstock Pvt. Ltd	Other entity

6. The aforesaid entities have traded amongst one another on and off-market in the said scrip. Amongst the aforesaid entities, following entities have traded in the scrip at BSE.



7. It was also alleged that SRP (hereinafter referred to as the “**Noticee**”) had not complied with the summons and therefore, not cooperated with the Investigating Authority (hereinafter referred to as “**IA**”).
8. The findings of the investigation also led to the allegation that the Noticee had violated Sections 11C (2) and 11C (3) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as

“**SEBI Act**”) and regulation 3 (a), (b), (c) & (d), 4(1), 4(2)(a), (k) and (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 2003 (hereinafter referred to as “**PFUTP**”) and consequently, liable for monetary penalty under Section 15 A(a) and 15 HA of the SEBI Act, respectively.

APPOINTMENT OF ADJUDICATING OFFICER

9. The undersigned was appointed as Adjudicating Officer vide order dated October 10, 2008 under section 15 I of the SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the ‘**Rules**’) to inquire into and adjudge under sections 15A(a) and 15HA of the SEBI Act.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

10. Show Cause Notice No. EAD-5/VSS/TZ/151628/2009 dated August January 22, 2009 (hereinafter referred to as “**SCN**”) was issued to the Noticee under rule 4 of the Rules to show cause as to why an inquiry should not be held against the Noticee and penalty be not imposed under sections 15A (a) and 15HA of SEBI Act for the alleged violations specified in the said SCN.
11. The Noticee vide letter dated March 2, 2009 replied to the SCN.
12. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, the Noticee was granted an opportunity of personal hearing on August 4, 2009, vide notice dated July 1, 2009 at SEBI, WRO, Ahmedabad. Ms. Mona Vora,

Authorized Representative of the Noticee (hereinafter referred to as “AR”) appeared on behalf of the Noticee. During the hearing, the AR reiterated the submissions made vide letter dated March 2, 2009. As regards the allegation pertaining to the announcements made by the Company, the Noticee vide its letter dated August 11, 2009 submitted copy of letters dated July, 07, 2008 and August 4, 2007 (along with annexure) sent to the IA by the Company as documentary evidence for authenticity of the said announcements.

CONSIDERATION OF ISSUES AND FINDINGS

13. The issues that arise for consideration in the present case are :
 - a. Whether the Noticee had violated sections 11C (2) and 11C (3) of SEBI Act?
 - b. Whether the Noticee had violated regulation 3 (a), (b), (c) & (d), 4(1), 4(2)(a), (k) and (r) of PFUTP?
 - c. Does the non-compliance, if any, attract monetary penalty under sections 15A (a) and 15HA of SEBI Act?
 - d. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?
14. Before moving forward, it is pertinent to refer to the provisions of sections 11C(2) & 11C(3) of SEBI Act and regulation 3 (a), (b), (c) & (d), 4(1), 4(2)(a), (k) and (r) of PFUTP , which reads as under:-

SEBI ACT, 1992

11C. Investigation

(2) Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956(1 of 1956), it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 or every person associated with the securities market to preserve and to produce to the Investigating Authority

or any person authorised by it in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.

(3). The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorized by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.

PFUTP REGULATIONS, 2003

Regulation 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.*

Regulation 4(1): *no person shall indulge in a fraudulent or an unfair trade practice in securities.*

Regulation 4(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) ...*
- (c) ...*
- (d) ...*

(e) ...

(f) ...

(g) ...

(h) ...

(i) ...

(j) ...

(k) *an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors;*

(l) ...

(m) ...

(n)...

(o) ...

(p) ...

(q) ...

(r) *planting false or misleading news which may induce sale or purchase of securities.*

NON-COMPLIANCE WITH SUMMONSES

15. I find that the IA had issued two letters and two summonses to the Noticee as part of the investigation to examine the role of the Noticee. The Noticee was asked to provide details, such as, relationship with other entities, reasons for off-loading of shares, details of purchase/sale/ off-market transactions, bank account statements and disclosures made. The details of summonses issued vis-à-vis status of their compliance by the Noticee are as under:

Letters/ Summons	Date	Whether delivered	Ref. No.	Reply received
Letter	26.12.2007	Yes	IVD/ID1/BM/AH/111855/07	No
Summons	09.06.2008	Yes	IVD/ID1/BM/AH/AIka/12805 8/08	No
Summons and letter	27.06.2008	No acknowledgement received.	IVD/ID1/BM/AH/AIka/13021 9/08	Yes. Only mentioned inability to provide bank statements.

16. In my view, the allegation can be summed up in two issues viz. (a) whether the Noticee has complied/ replied to the summonses and if so, (b) whether the said reply is complete and relevant to the information sought by the IA.
17. As regards the first issue, the Noticee has denied the allegation of non compliance of summonses. In support of this, the Noticee submitted letters dated January 23, 2008 (reply to letter dated December 26, 2007) and July 29, 2008 (reply to summons and letter dated June 27, 2008). The Noticee has not submitted any reply to summons dated June 9, 2008.
18. I have perused the aforesaid letters and find that the letter dated January 23, 2008 is submitted/ signed by Ramswroop Panchariya and not the Noticee. Also, nowhere in the said letter Ramswroop Panchariya has mentioned that the said letter is also submitted on behalf of the Noticee. Since the said letter is not submitted by the Noticee, the question of examining its content does not arise.
19. As regards letter dated July 29, 2008, the same has been received by the IA as mentioned in the SCN. Therefore, the allegation

pertaining to the said letter is that of being incomplete and not satisfactory vis a vis the information sought.

20. As regards the second issue regarding the content of the reply submitted by the Noticee, I have perused the said reply i.e. Letter date July 29, 2008 and find the following:

Information Sought by the IA	Reply of the Noticee	Whether Complied
Relationship with other entities	No reply	No
Reason for offloading shares just after the announcement of preferential issues.	No reply	No
Details of purchase, sale and off market transactions from June 1, 2003 to June 30, 2004. Date, name of broker, name of counter party, quantity and price. Demat account statement.	No reply	No
Bank account statements	Kuber Co-operative Bank Ltd., in which we had accounts has since been ceased to function pursuant to the order No. UBD. CO.NSB.II.LC/112/12.21.3 53/2006-07. Hence we are unable to produce the bank statement	Yes, however, the reply is not satisfactory
Disclosures made to the company and exchange under PIT, 1992 and SAST, 1997	No reply	No

21. I find from the above that the Noticee had replied only regarding the information pertaining to the bank statement and that also had only stated his inability to produce the same.
22. In view of the above, I find that, two letters and two summonses were issued to the Noticee and he only replied to the second/last

summons/letter dated June 27, 2008 vide his letter dated July 29, 2008. Even that is found to be unsatisfactory and inadequate.

23. I find that the details sought by the IA were absolutely vital for SEBI to carry out its solemn objective of investor protection and regulation of the securities market. The timely submission of the information as sought through the summonses from the Noticee would have possibly helped the IA to complete the investigation and to establish the manipulation and fraudulent trade practice in the trading in the shares of AIL. Further, I find that the Noticee was given adequate opportunity by the IA to comply with the summonses. I am also of the view that it is the duty, responsibility and obligation of every person from whom information is sought to fully co-operate with IA and promptly produce all documents, records, information, etc., to the IA. If persons are allowed to flout the summonses issued to them during the course of the investigation, SEBI, as the watchdog of the securities market, will not be able to discharge its statutory obligations in protecting the interests of the investors and safeguarding the integrity of the securities market. Had Noticee co-operated with the IA, it might have come clean and at the same time the real culprits could have been identified and dealt with as per law by SEBI.
24. In the light of the above, I hold that the allegation of violation of the provisions of Sections 11C (2) and 11C (3) of the SEBI Act by the Noticee stands established.
25. The Honorable Securities Appellate Tribunal (hereinafter referred to as "SAT") in Appeal No.95/04 dated August 9, 2004 in *Mayfair Paper & Board Pvt. Ltd. V SEBI* held that "*failure to furnish information*

to the Investigating Authority of SEBI shall attract the penalty prescribed under section 15A of the SEBI Act”.

26. With regard to the repetitive nature of default, I find that the IA had issued two summonses and two letters to the Noticee, whereas, the Noticee had complied with one summons/one letter, that too partly. This indicates that the default is of repetitive nature.
27. As regards the quantum of penalty, the Honourable SAT had the occasion to consider a similar factual situation in Appeal No: 114 of 2005, dated September 20, 2005 *Nokia Finance International Pvt. Ltd. Vs SEBI*. In the said appeal, the Honorable SAT examined the failure on the part of the appellant to provide necessary information to the IA of SEBI. In the said matter, while upholding the penalty imposed by the Adjudicating Officer, the SAT observed that the appellant could have availed the opportunity to submit the required information, however, he failed to do so and the penalty has been imposed in terms of the provisions of law. The order passed by SAT is relied upon in this case for guidance. Considering the aforesaid observations of SAT, the failure on the part of the Noticee to comply with the summonses has to be viewed seriously.
28. Further, I have also perused the order dated January 07, 2009 of SAT in Appeal No. 106 of 2006 *DKG Buildcon Pvt. Ltd. V SEBI*, the SAT has stated inter-alia, that” *By not responding to the summons, the representative(s) of the appellant did not appear before the investigating officer as a result whereof their statements could not be recorded. This obviously, hampered the investigations....*” The Hon'ble SAT had also upheld the penalty of Rs.1,00,00,000/- levied on the entity u/s 15A (a) of the SEBI Act for failure to comply with the summons. Similarly, in a recent case with similar factual situation, the

Honourable SAT in its order dated October 8, 2009, Appeal No. 167 of 2009 *M/s Kajol Impex Ltd. Vs. SEBI* upheld the penalty of Rs.25,00,000/- levied on the entity u/s 15A(a) of SEBI Act for failure to comply with the summonses.

MANIPULATIVE TRADING

29. The Noticee (Chairman and Managing Director of AIL), Arun Panchariya, Ashok Panchariya, Ramswaroop Panchariya, Radha Panchariya, Saritadevi Panchariya and Shantadevi Panchariya are promoters of AIL(hereinafter referred to as “**Panchariya Group/promoters/Promoter Group**”).
30. **Misleading Announcements** – It was alleged that the corporate announcements made were premature, misleading and just to allure the investors and create liquidity in the scrip so that the Promoter Group, its related entities and some of the other entities could off-load shares in the market. The allegations regarding the same, his reply and my findings thereon are as under:

Allegation 1: Difference in un-audited and audited results –As per the un-audited results, the sum of net profits for the four quarters of the year ended September 30, 2003 was Rs.6.66 crore. However, in the audited results for the year ended September 30, 2003, net profit was shown as Rs.4.47 crore i.e. around 33% less than the un-audited figure of Rs.6.66 crore. Details regarding the un-audited and audited results are as under:

Un-audited Quarterly Results			Rs. in crores	
Particulars	Sept 30, 2003	Jun 30, 2003	Mar 31, 2003	Dec 31, 2002
Operating income	26.93	25.76	1.88	-.093
Total Income	27.04	25.80	1.91	3.62
Net Profit after tax / (Loss)	3.44	3.77	-0.32	-.227

Particulars	Sept 30, 2003	Jun 30, 2003	Mar 31, 2003	Dec 31, 2002
Eq Cap (Face value – Re. 1)	25.00	25.00	25.00	25.00
Approved on	6th Oct 03	30th July 03	29 th Apr 03	NA

Audited Annual Results

Particulars	Sept 30, 05	Sept 30, 04	Sept 30, 03	Sept 30, 02
Total Income	383.97	110.04	58.34	12.19
Profit Before Tax / (Loss)	0.21	4.66	8.12	0.02
Net Profit after tax / (Loss)	0.14	4.66	4.47	0.02
Eq Cap (Face value – Re. 1)	50	50	25.00	25.00

Reply: The Noticee has submitted that the reason for variation in the net profit between the audited and un-audited results was due to the difference in providing for tax and deferred tax estimated in the un-audited results. The Noticee has also submitted that the Company had informed the reasons for the variance to the stock exchanges as per the listing agreement.

Finding: The allegation pertains to two issues viz., (a) The reason for difference in the audited and un-audited results published by the Company and (b) Whether the same was informed to the stock exchanges. Upon perusal of the documents on record and the Noticee's submissions, I find the following:

- As regards the reason for variance between the un-audited and audited results which was stated to be due to the difference in deferred tax estimate and provision for tax, I find that the tax laws between the two periods remained the same. In such a situation, the Noticee's submission that the error in estimating the deferred tax while preparing the un-audited results resulted in higher net profits as compared with the actual provision for tax made in the audited results resulted in lower profits does not appear to be in order. The Noticee has not clarified as to what made AIL to calculate the tax liability wrongly while preparing the un-audited

results. In the absence of any such clarification/justification and the tax laws remaining the same during the said period, the reason cited by the Noticee does not appear to be bonafide and the miscalculation of the quarterly results prima-facie appears to be a deliberate attempt to influence the investors by showing inflated profits. Moreover, the Company published these quarterly results with high profits with the headline “Another Textile turns around”, which made the (mis)information more prominent and allured the investors. Therefore, the reason cited by the Noticee as a bonafide error cannot be accepted.

- As regards the second issue of informing the stock exchanges referred to at (b) above, I find that the Noticee has not submitted the proof although it had claimed to have annexed the same as annexure 7 to its letter dated 7th July, 2008. However, I find from page 7 of the investigation report that SKSE had only confirmed receipt of such information from AIL and other stock exchanges have confirmed that they had not received any such intimation from the Company. I also find that the trading in the scrip of AIL had taken place during the investigation period (when the variance had also taken place) in BSE and therefore, communicating such variance in financial results ought to have been made to BSE, which had not been done.

Allegation 2: Sudden rise in the income and net profit - As per the un-audited results, the total income and net profit of the Company had shown sudden rise during the quarter ended June 30, 2003 as compared to the quarter ended March 31, 2003. Total income and net profit were Rs.25.8 crore and Rs.3.77 crore

respectively during the quarter ended June 30, 2003 as compared to total income of Rs.1.91 crore and net loss of Rs.0.32 crore during the quarter ended March 31, 2003.

Reply: As regards the sudden rise in the total income and net profit, the Noticee has submitted that the Company got export and indigenous orders from various entities during March 2003 which they fulfilled and completed during the quarter ended June 2003 and most of the sales were effected during the said period. As regards the documentary evidence in support of the above, the Noticee/Company has informed that pursuant to provisions of Section 17 of the Companies Act, 1956, the registered office of the Company was transferred from the State of Gujarat to Maharashtra and during the course of such transfer, some of the files which were statutorily not required to be preserved were destroyed and as such, the records for the year 2003 (including the orders) were not available with them. In this regard, the Noticee has referred to Section 209 of the Companies Act, 1956. The Noticee/Company has also informed about their inability to provide bank statements as Kuber Co-operative Bank Ltd in which the Company had bank account is no longer in existence pursuant to the order of Reserve Bank of India.

Finding: As regards inability to provide details pertaining to the orders and sales for the year 2003, Section 209 of the Companies Act has to be referred to examine (a) whether the said information constitutes 'books of account' and if so, (b) then for how long the same must be preserved/maintained by the Company. Upon perusal of the said Section, I find the following:

- As regards the first issue, as per Section 209(1)(a) and (b) of the Companies Act, 1956, every company shall keep at its

registered office proper books of account with respect to (a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure take place and (b) all the sales and purchases of goods by the company. Therefore, the details pertaining to sales and orders constitutes 'Books of account'.

- As regards the second issue, the time period for maintaining the books of account, Section 209(4A) of the Companies Act, 1956 states that the books of account relating to a period of not less than eight years immediately proceeding the current year together with the vouchers relevant to any entry in such books of account shall be preserved in good order. This clearly indicates that the Company has not maintained its records / documents properly as required under the Companies Act, 1956.
- In view of the above, the submission of the Noticee for his inability to produce documentary evidence in this regard is devoid of merit and untenable. Therefore, the reason cited by the Noticee for the sudden increase in the income during the quarter ended June 30, 2003 as compared with the income during the quarter ended March 31, 2003 has not been supported by documentary evidence and consequently, cannot be accepted at face value.

Allegation 3: Notes to accounts of quarter ended June 2003 -

The Company had published its June 2003 unaudited quarterly results in Economic times on August 5, 2003 with caption "Another textile turns around". In the notes to accounts of results for quarter ended June 2003, the Company made following comments:

- a. The Company expects to export textile products above Rs 500 million in next three years.
- b. The Company has export orders worth Rs 94.10 million in hand.
- c. Board of Directors decided to double the installed capacity with in next two years by internal accrual and term loans.

As regards export orders worth Rs. 94.10 million, it was observed that most of these orders were to be executed/fulfilled on or before July 31, 2003. The Company had made announcement of these orders in the notes to June 2003 quarterly results which were published on August 2, 2003. The Company had not provided any information regarding whether those orders were executed or not.

Reply: The Noticee denied having made any misleading/premature announcement regarding export orders.

Finding: As regards announcement pertaining to the export order of Rs 94.10 million, I find that most of these orders were to be executed/fulfilled on or before July 31, 2003 and the Company had made announcement of these orders in the notes to June 2003 quarterly results which were published on August 2, 2003. The Company did not give any information regarding the status of the execution of the said orders in the quarterly results. Therefore, the Company/Noticee made the announcements about the export orders as though the said orders were yet to be executed even though the due date to execute most of those orders was over. Hence, such incomplete information was published with an intent to allure the investors to trade in the said scrip and the action does not appear to be bonafide.

Allegation 4: The revenue of the Company had increased by around 379% to Rs. 58.34 crores in the year ended September 2003 as compared to Rs. 12.19 crores for the year ended September 2002. This rise in revenue was accompanied by a rise in net profit to the tune of Rs. 4.47 crores for the year ended September 2003 as compared to Rs. 2 lacs for the year ended September 2002.

Reply: The Noticee has not submitted any rationale for such abnormal increase.

Finding: As the Noticee had failed to substantiate the abnormal increase, and when such unjustified abnormal increase in the revenue of the Company is read with my other findings with regard to the financial results of the Company as stated above, I am of the view, that the same was also another device used by the Company to allure the investors to trade in the scrip of AIL, with a malafide intent.

Allegation 5: In the notes to accounts of the results for the year ended and quarter ended September 2003, the following comments were made:

- a. Looking to the constant flow of high value export enquiries, the Company expects export business to touch Rs. 100 crore mark in the next financial year.
- b. Board expects textiles demand to be increased along with margins for at least next three years. Board is confident of improving profit quarter after quarter for next three years.
- c. The Company has started to export Terry towels and garments in Gulf countries.

- d. Tie up with J-Mark for export of garments in USA, UK and other European countries.
- e. The Company has doubled the production capacity by acquisition of two units.

Reply:

- a. As regards high revenue projections from exports the Company informed that it got enough orders from indigenous markets which were more beneficial to the Company as compared to exports and considering less risk in the domestic market the management decided first to execute indigenous order and then export. The Company informed that their sales for the year ended September 2004 were Rs. 110 crore.
- b. As regard exports to the Gulf Countries, the Noticee replied that in the financial year 2003-04 the company had exported textile products to a Gulf Country and provided copies of few invoices. The Company further added that however some of the orders were not executed because of the pricing fluctuations and ultimately were cancelled.
- c. Regarding the agreement with J-Mark for export to USA, UK etc., the Noticee provided copy of Memorandum of Understanding entered with J-mark and copies of invoices for the same.
- d. Regarding the doubling of the production capacity by acquisition of two units, the Noticee informed that the Company entered into some understanding with two existing spinning units viz. Krishna Spin Tex and Somay Cotsyn Private Ltd to get used 100% production of the said units and accordingly Company acquired 100% production

capacity of the two existing spinning units located in Ahmedabad. The Noticee also provided the copies of the agreements with these two units. The Company also submitted annual reports of the financial year 2003-04 for the details of production for the Company.

- e. The Company further submitted that it was a part of regular practice of the Company to announce the major significant events to the stakeholders and public as a whole.

Finding:

- a. The Company did not provide the basis on which it made announcements regarding high revenue projections from exports.
- b. The Company also did not provide all copies of orders executed, documentary proofs of delivery and bank statements for the quarters ended June and September 2003.
- c. As regards all the invoices submitted by the Noticee, I find that the Noticee has not provided the bank account statement of the Company. Therefore, the genuineness of these invoices can not be verified.
- d. As regards, acquisition of two units, I find that the agreement in this regard was for using the production capacity and not for the actual acquisition/purchase of those units. As regards the annual reports of the financial year 2003-04 and the details of production for the Company, there were no specific details provided about the production done by these two units. The Noticee did not provide bank statements of the Company for reasons as stated above. Thus, misleading announcements were made regarding the acquisition of

manufacturing units even though there was no actual purchase/ acquisition of those units.

- e. As regards Company's regular practice of informing all the significant event to the stake holders, it is observed that the Company had never made such announcements in the notes to accounts prior to the announcement of June 2003 quarterly results.

31. In view of the above, I find that the aforesaid corporate announcements were premature, misleading and made with a malafide intention to allure the investors to trade in the scrip of AIL.

32. **Trading Details :**

- a. **On Market** – The Promoter Group, RFPL, RBC traded in the said scrip through broker HH. The others, viz., SST, RBC, PCJ, NDT, SMM and GCK traded through broker PIPL. AKP and RBR traded through broker Equisearch Broking Pvt. Ltd. The details of their on market transaction are as under:

Names	Shares Bought	Shares Sold
Promoter Group	0	2,69,06,111
RFPL	1000	5,01,000
RBC	61,700	0
SST	1,70,539	1,75,94,964
PCJ	1,42,800	3,36,02,273
NDT	30,491	3,38,32,531
SMM	58,15,919	1,39,87,416
GCK	3,60,210	5,17,53,963
AKP	6,20,154	68,71,434

- b. I find from the above table that except for RBC, all these entities have made large sale transactions as compared to the purchases in AIL.

- c. **Off Market Transactions** – Promoter Group, PACs, Promoter related entities, other entities and broker PIPL have indulged in off market transactions amongst one another.
- d. These on market and off market transactions were executed very close to the date of various misleading/premature positive announcements as mentioned earlier in this order. The details of these transactions vis a vis the said announcements are as under:

Trading vis-à-vis corporate announcements

Sr. No	Date	News text	Implication on price of the scrip	Trading by major entities on BSE	Offmarket transactions
1	Informed to exchange on August 2, 2003. Published in Economic times on August 5, 2003 with caption "Another textile turns around"	Results for the quarter ended June 2003:	Price of the scrip started rising on from next trading day of August 4, 2003 (opening price of Rs.1.06) reached a high of Rs.2.82 on August 12, 2003 and closed at Rs.2.19 on August 13, 2003. Previous close was Rs.0.89 on August 1, 2003	Vikramsingh J Rajput sold 9525000 shares on Aug 6, 7, 8,11 12 2003	Vikramsingh J Rajput had received 30,00,000 shares from Panchariya Textiles Industries Ltd (having the same address as Alka India Ltd) in off-market on August 12, 2003
2	Informed to Exchange on October 6, 2003	Results for the quarter ended September 2003	On 6 th October 2003, the scrip opened at Re. 0.73 and touched its applicable upper circuit rate (20%) of Re. 0.81 (previous close was Re. 0.68).	Girdharbhai Chaiturao Karu Sold 3827959 on 4 days during 06/10/2003 to 14/10/2003	Girdharbhai Chaiturao Karu had received 50,00,000 shares from Ashwin Patel on October 10, 2003, 5,00,000 shares from Cavalier Securiites Ltd on October 9, 2003, 25,00,000 shares from Ratnaram B Rabari on September 9, 2003 and 5580000 shares from Nilesh Vinodchandra Sheth on September 29, 2003

				Pravin C Jain sold 3153134 shares on Oct 10 and 16, 2003	Pravin C Jain received 5500000 shares from Ashwin Patel on October 10, 2003, 4,00,000 shares from Shivram Motilal Meena on October 20, 2003 and 9644000 shares from Lila Laboratories Ltd in September 2003
3	Informed to Exchange on November 18, 2003	Alkas Board declares Results for Year ended September 2003 and dividend:	On 18 th November 2003, the scrip opened at Re. 0.9 and touched its intra day high of Re. 0.92 (8.64% higher as compared to previous close of Re. 0.86).	Narendra Tiwari sold 7943246 shares on Nov 18, 19 and 20, 2003	Received 4032000 shares from Nilesh V Sheth on Nov 20, 2003, 1900000 shares from Sanjay Thakkar and 1200000 shares from pravin Jain on Nov 21, 2003
4	Informed to Exchange on January 3, 2004	Alkas - Outcome of AGM:	On 5 th January 2004 (next trading day after 3 rd January 2004), the scrip opened at Re. 0.6 and touched its intra day high of Re. 0.65 (14.04% higher as compared to previous close of Re. 0.57).	Pravin C Jain sold 3176511 shares on Jan 5, 2004	received 19036500 shares from Right Finstock Pvt Ltd Dec 16, 2003 to January 6, 2004
	12:13:16 PM	Alka Spinners Ltd has informed BSE that at the Annual General Meeting held on December 31, 2003, the shareholders have approved the following business matters:		Narendra D Tiwari sold 13539286 shares on Jan 6, 7 and 8, 2004 and sold 4403600 shares on Jan 20 and 22, 2004	received 37409350 shares from Right Finstock Pvt Ltd during Jan 7-21 2004, 1618000 shares from Cavalier Securities on Jan 7, 2004
		1. Increase in Authorised Share Capital of the company from Rs 250 million to Rs 1000 million.	Price of the scrip reached a high of Rs.0.68 on January 6, 2004 and started falling after that and closed at Rs. 0.35 on January 15, 2004.	Panchariya Group entities sold 26906111 shares on 6 days during Jan 9 to 16, 2004	total pay in for settlement number 206 (due on 20th January 2004), on account of sale transactions of Promoter Group was for 15,40,485 shares, for which altogether 6,98,088 shares were received in member Harikishan Hiralal's pool account from them and remaining 8,42,397 shares were credited to members pool account from demat account number 10013034 which belongs to Narendra Tiwari to meet the entire pay in

					obligation of Promoter Group
		2. To issue and allot in one or more lots on preferential or as Right Issue basis not exceeding 25,00,00,000 equity shares of Rs 1/- at a price not less than Re 1/- per share.		Cavalier Securities Ltd. sold 18,09,804 shares (9,92,761 shares on 15th January 2004 and 8,17,043 shares on 3rd February 2004)	Had off-market transaction with Panchariya Group entities in May- June 2004. Had also off-market transactions with various entities through out the investigation period
		3. Issue of Non-Cumulative Redeemable 6% Preference Share of Rs 100/- each not exceeding Rs 250 million			

- e. The Noticee traded at BSE in the said scrip through broker M/s Harikishan Hiralal.
- f. On December 31, 2003, the Annual General Meeting (hereinafter referred to as “**AGM**”) of the Company was held wherein the shareholders of AIL approved issuance of 25 lakhs of 6% Non-Cumulative Redeemable Preference Share of Rs 100/- each to the entities including Panchariya Group.
- g. Panchariya Group offloaded 11.48% holding in the Company immediately after the said AGM.

- h. They traded on six trading days during the period from January 9, 2004 to January 16, 2004 and altogether sold 2,69,06,111 shares at an average rate of Re.0.42, aggregating to 86.41% of market volume on those six days.
- i. On perusal of details of trading done by the said group, I find that the total pay in for settlement No. 206 (due on 20th January 2004), on account of sale transactions of Promoter Group was for 15,40,485 shares, for which altogether 6,98,088 shares were received in member Harikishan Hiralal's pool account from them and remaining 8,42,397 shares were credited to member's pool account from demat account No.10013034 which belongs to Narendra Tiwari (one of the major sellers in the market).
- j. The aforesaid shares were acquired by the Panchariya Group through preferential allotment made by AIL on March 31, 2004.
- k. The allotment was made to the promoters who were holding their earlier shares in physical form at the time of said allotment. This was in violation of Clause 13.3.1 (f) of SEBI (Disclosure & Investor Protection) Guidelines, 2000 (hereinafter referred to as "**DIP Guidelines**"). For this purpose, it is pertinent to reproduce the said clause, which reads as under:

"No listed company shall make preferential issue of equity shares / warrants/PCDs, FCDs or any other financial instruments convertible into or exchanged with equity shares at a later date, to any person unless the entire shareholding if any, of such persons in the company, , is held by him in dematerialized form."

In the light of the above, AIL has violated Clause 13.3.1 (f) of DIP Guidelines.

- l. Further, these shares were under lock-in period in terms of Clause 13.3.1 (g) of DIP Guidelines. The Lock-in period for the aforesaid shares was from 1 December, 2003 (one month prior to the aforesaid AGM) to September 30, 2004 (six months after the

date of allotment on March 31, 2004). Despite this, the shares were offloaded in the market by the entities, during the lock-in period.

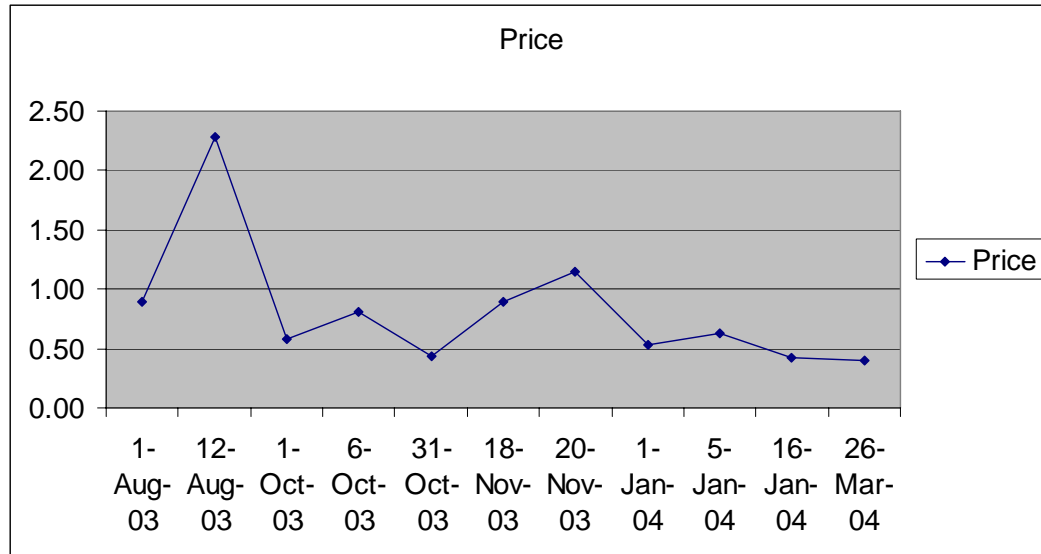
“Where the shares, warrants, PCDs, FCDs or any other financial instruments convertible into or exchanged with equity shares at a later date, are issued on preferential basis, the entire pre preferential allotment shareholding of such allottees shall be under lock – in from the relevant date upto a period of six months from the date of preferential allotment.”

m. I find that the Panchariya Group had traded on six days during the period from January 9, 2004 to January 16, 2004 and altogether sold 2,69,06,111 shares of AIL. In the light of the aforesaid clause, I am of the view that the said shares were under lock-in period from 1 December, 2003 to September 30, 2004 and hence, the Noticee/Panchariya Group had violated Clause 13.3.1 (g) of DIP Guidelines.

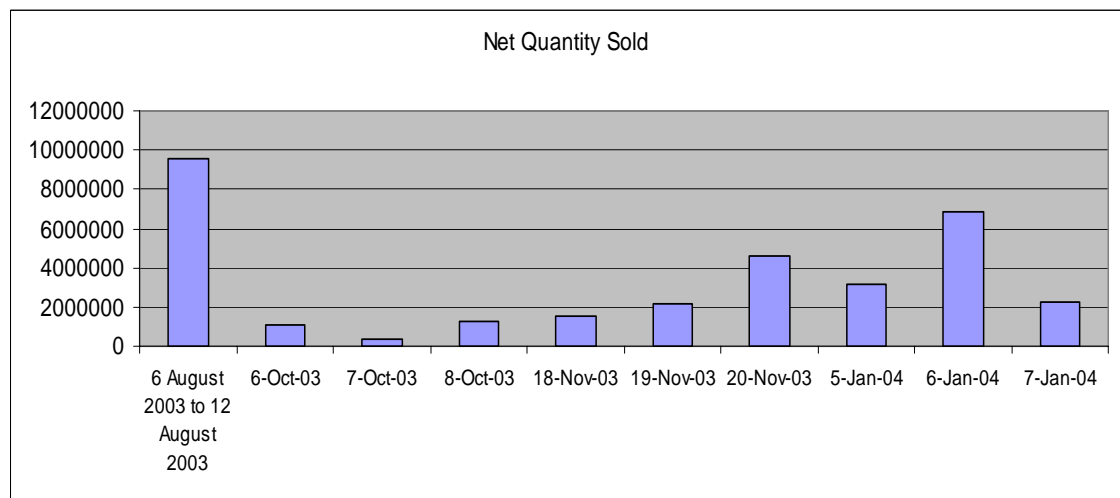
n. As regards off market transactions of the Noticee, it was alleged that he had transferred shares of AIL from his HUF account to his own account. In my view, this does not amount to any violation.

33. An analysis of the corporate announcements made, its impact on the price movement and the transactions executed by the promoters/their related entities/PAC's and other entities, reveals the following:

(a) There was sudden/temporary spurt in the price of shares of AIL immediately after every corporate announcement was made by AIL. This temporary rise in price during such corporate announcements is graphically depicted below:



- (b) It was during such occasions when the price of shares of AIL rose temporarily, the promoters/their related entities/PACs/other entities had offloaded their shares of AIL in the market. The details of shares sold by the entities during such temporary rise is graphically depicted below:



- (c) Detailed chronology of events viz., the corporate announcements, its impact on price and sale of shares by the aforesaid entities is as under:

- Results for the quarter ended June 2003 was informed to BSE on August 2, 2003 and published in Economic Times on August 5,

2003. The closing price as on August 1, 2003 was Re.0.89. Pursuant to the aforesaid corporate announcement, the price of the scrip started rising from next trading day of August 4, 2003 (opening price of Re.1.06) reached a high of Rs.2.82 on August 12, 2003. VJR (other entity) sold 95,25,000 shares on August 6, 7, 8, 11, and 12, 2003.

- Results for the quarter ended September 2003 was informed to BSE on October 6, 2003. The closing price as on October 5, 2003 was Re.0.68. Pursuant to the aforesaid corporate announcement, on October 6, 2003, the scrip opened at Re. 0.73 and touched its permissible upper circuit price (20%) of Re. 0.81. The price reached a high of Re.0.93 as October 10, 2003 and closed at Re.0.68 on October 14, 2003. GCK (other entity) sold 38,27,959 shares on 4 days i.e. from October 6, 2003 to October 14, 2003 and PCJ (other entity) sold 31,53,134 shares on two days i.e. on October 10 and 16, 2003.
- AIL declared results for the year ended September 2003 as well as the dividend and informed the same to BSE on November 18, 2003. The closing price as on November 17, 2003 was Re.0.86. On 18th November 2003, the scrip opened at Re. 0.9 and touched its intra day high of Re. 0.92 (8.64% higher as compared to previous close of Re. 0.86). Further, the closing price went up to Re.1.15 on November 20, 2003. NDT (other entity) sold 79,43,246 shares on November 18, 19 and 20, 2003.
- AIL informed the outcome of AGM to BSE on January 3, 2004. On 5th January 2004 (next trading day after 3rd January 2004), the scrip opened at Re. 0.6 and touched its intra day high of Re. 0.65 (14.04% higher as compared to previous close of Re. 0.57). On January 9, 2004, the price touched a high of Re. 0.61. promoter group entities sold 2,69,06,111 shares on 6 days during January 9

to 16, 2004 and CSL sold 18,09,804 shares (9,92,761 shares on January 15, 2004 and 8,17,043 shares on February 3, 2004).

- (d) Details of the net shares sold in the market by the aforesaid entities are as under:

S. No.	Entity Name	Net Qty Sold	Net Value (in Rs.)	Weighted Average Price
1	SRP	6499971	3139863.03	0.48
2	AP1	5072840	2128714.55	0.42
3	AP2	4841000	2052837.20	0.42
4	RP1	6403009	2395672.35	0.37
5	RP2	2054300	740189.00	0.36
6	SP1	1774991	703800.15	0.40
7	SP2	260000	104200.00	0.40
Sub Total	Promoters	26906111	11265276.28	0.42
8	CSL	1809804		N.A.
Sub Total	PAC	1809804		
9	SST	17424425	12085357.23	0.69
10	RBC	-1718900	-1006504.00	0.59
11	PCJ	33459473	21158846.34	0.63
12	NDT	33802040	23307146.29	0.69
13	SMM	8171497	5121611.16	0.63
14	GCK	51393726	45627942.46	0.89
15	RFPL	500000	415940.00	0.83
16	RBR	3781961	4212336.29	1.11
17	AKP	2469319	4695462.89	1.90
18	RVJ	9525000		N.A.
Sub Total	Other entities	158808541	115618138.66	0.73
Grand Total		187524456	126883414.94	0.68

- (e) The aforesaid findings substantiate the fact that the promoters of AIL, their related entities and other entities offloaded shares in the market making use of the misleading corporate announcements.

34. **Link amongst promoters, major clients, promoters related entities and brokers** - On perusal of the material available on record, I find the following:

- a. KJP and DUD were appearing in the list of person acting in concert with the promoters as per the shareholding pattern for the quarter ended June 30, 2003 submitted by the Company to the stock exchanges.
- b. Ashok Panchariya is also a director at CSL. On perusal of list of allottees of 6% Non cumulative redeemable preference shares of Rs. 100 each, I find that the said shares were held in the name of Ashok Panchariya on behalf of CSL. This, indicates the common link between AIL and CSL.
- c. PTIL (currently known as Asian Granito India Ltd.) was having same address as that of AIL, used to have common Directors/promoters with AIL and was shown in the shareholding pattern for the quarter ended June 30, 2003 under the category private corporate bodies.
- d. RFPL had received shares from KJP and DUD, who were persons acting in concert with the promoters as well as from other entities in off market deals.
- e. RVJ, AKP, GCR, ST, NT, SMM, PCJ and RBR sold shares of AIL after the aforesaid announcements. The aforesaid entities had received shares from CSL, PTIL, NVS, HCM and RFPL in the off-market transactions just before the sale of shares. All these entities including RBC also transacted in off-market with one another around the same period.
- f. CSL and RFP also sold shares in the market on BSE. These entities together sold 15,03,42,926 shares (around 60% of the equity capital) from 6 August, 2003 to 22 January, 2004. Out of these, 8,62,29,364 shares were sold within few days

of the aforesaid announcements when the price of the scrip went up.

35. Regulations 3(a) of PFUTP prohibits a person from buying, selling or otherwise dealing in securities in a fraudulent manner. Regulations 3(b), 3(c) and 3(d) of PFUTP prohibits a person to use manipulative or deceptive device or contrivance, employ any device, scheme or artifice to defraud and engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, respectively, with regard to 'issue', 'purchase' or 'sale' of any security listed or proposed to be listed at a recognized stock exchange. Regulation 4(2)(a) of PFUTP prohibits a person from indulging in an act which creates false or misleading appearance of trading in the securities market. Regulation 4(2)(k) prohibits publishing of advertisements that are misleading or that contains information in a distorted manner and which may influence the decision of the investors. Regulation 4(2)(r) prohibits a person from planting false or misleading news which may induce sale or purchase of securities.
36. If the facts of the case as narrated in the earlier paragraphs of this order are tested with the touchstone of the aforesaid provisions of PFUTP, it would follow that (i) certain corporate announcements were made by AIL which were premature, misleading and with a malafide intent to allure the investors to trade in the scrip of AIL, (ii) Noticee took advantage of this artifice and traded in the scrip of AIL and (iii) aided and abetted the other (related) entities to trade in the scrip of AIL based on such artifice. Thus, the acts of the Noticee clearly created false and misleading appearance of trading in the shares of AIL and he did not act in a bonafide manner. The facts of the case highlight the Noticee's involvement, by publication of

premature/misleading positive announcements to allure the investors to trade in the scrip of AIL in order to create liquidity in the scrip and also collectively offloaded 2,69,06,111 shares of AIL in the market along with the other promoters. In addition, the Noticee also aided and abetted the other entities mentioned above in this order in trading in the scrip of AIL which led to creation of artificial volumes and misleading appearance of trading in the said shares on account of collusive activities with the entities as discussed in the preceding paragraphs.

37. 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 Noticee in not only aiding and abetting those entities which indulged in an element of fraud and unfair trade practices but also actively participated in the game plan of manipulation. This is also evident from the fact that all these major sellers in the market and entities involved in the off-market were connected to the promoters of AIL one way or the other. Further, various announcements including better quarterly results along with some other premature/misleading positive announcements were made just to allure the investors and create liquidity in the scrip so that the Promoters/its related entities could off-load shares in the market as well as through off-market. This conclusively establishes the allegation that the Noticee through collusion with the entities in the 'Promoter Group' transacted in the shares of AIL 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.
38. 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.**” (emphasis supplied).

39. In the light of the above, I hold that the allegation of violation of the provisions of Regulation 3 (a), (b), (c) & (d), 4(1), 4(2)(a), (k) and (r) of PFUTP by the Noticee stands established.

LEVY OF PENALTY

40. 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...”.
41. Thus, the violation of sections 11C (2) and 11C (3) of SEBI Act and regulation 3 (a), (b), (c) & (d), 4(1), 4(2)(a), (k) and (r) of PFUTP by the Noticee, makes him liable for penalty under section 15A (a) and 15HA of SEBI Act, 1992 which read as follows:

15A. Penalty for failure to furnish information, return, etc.- If any person, who is required under this Act or any rules or regulations made thereunder,-

(a) to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;

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. 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.

42. While determining the quantum of penalty under section 15A (a) and 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.”*

43. From the material available on record, I find that the ‘Promoter Group’, as a whole, had a net sale of over 2 crore shares of AIL and realized proceeds over Rs.1 crore. I also find that the promoters/their related entities/PACs/other entities have collectively sold more than 18 crore shares and realized proceeds over Rs.12 crores. The Promoter Group also traded off market amongst one another and with CSL. CSL further traded with other major sellers/buyers in the market. Due to the manipulation that took place in the scrip of AIL, genuine investors were attracted to trade in the shares of AIL. I am of the view that the interest of securities market and of the investors requires that the persons who involve or engage in manipulative, unfair and fraudulent practices are not allowed to unjustly enrich themselves at the cost of genuine investors. Greater the liquidity

higher the investors' attraction towards investing in that scrip. Hence, anyone could have been carried away by the unusual fluctuations in the volume and been induced into investing in the said scrip. The value of the shares of AIL which are left in the hands of the gullible investors who got trapped in the aforesaid sinister game plan, had reduced substantially. These genuine investors had to suffer considerable amount of loss on account of the manipulation. Besides, this kind of activity seriously affects the normal price discovery mechanism of the securities market. 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.

ORDER

44. After taking into consideration all the facts and circumstances of the case, I hereby impose a penalty of Rs.2,00,000/- (Rupees Two Lakhs only) under section 15A(a) and Rs.8,00,000/- (Rupees Eight Lakhs only) under section 15HA of SEBI Act, {i.e. a total penalty of Rs.10,00,000/- (Rupees Ten Lakhs only) on the Noticee which will be commensurate with the violation committed by him.
45. 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 Mrs. Medha Sonparote, Deputy General Manager, Investigations Department - 1, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

46. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: **November 13, 2009**
Place: **Mumbai**

V.S.SUNDARESAN
ADJUDICATING OFFICER