

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PB/AO- 110/2010]

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

RIGHT FINSTOCK PRIVATE LIMITED

SEBI REGISTRATION NO. INB020916939

PAN NO. NOT AVAILABLE

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 India Polyspin Limited (hereinafter referred to as ‘**IPL/ Company**’) during the period from December 05, 2003 to January 28, 2004.
2. The findings of the investigation led to the allegation that Right Finstock Private Limited (hereinafter referred to as “**Noticee/RFPL**”) had violated regulation 7(1) read with regulation 7(2), regulation 10 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as ‘**SAST Regulations**’) regulation 13(1) and regulation 13(3) read with regulation 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as ‘**PIT**’)

Regulations’) and regulations 4(1),(2)(a),(b),(e)and(g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as ‘**PFUTP Regulations’)** and consequently, liable for monetary penalty under sections 15HA, 15A(b) and 15H (ii) of the SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

3. Mr. V.S. Sundaresan was appointed as Adjudicating Officer vide order dated April 03, 2008 under section 15 I of the SEBI Act read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as ‘**Rules’)** to inquire into and adjudge under sections 15HA, 15A (b) and 15H (ii) of the SEBI Act.
4. Consequent upon the transfer of Mr. V.S. Sundaresan, I have been appointed as the Adjudicating Officer vide order dated December 24, 2009.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. Show Cause Notice No.EAD-5/VSS/JR/133005/2008 dated July 25, 2008 (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 initiated and penalty be not imposed under sections 15 HA, 15A (b) and 15H (ii) of the SEBI Act for the alleged violation specified in the SCN.
6. The SCN addressed to the Noticee was sent through SPAD. The SCN was received and acknowledged by the Noticee. The Noticee vide letter dated July 29, 2008 stated inter-alia that :

- *“Our company was engaged in the broking business as one of the members of Ahmedabad Stock Exchange and during the financial year 2003 and 2004.*
- *During the said period company has purchase and sale the shares of India Polyspin Limited on behalf of its clients.*
- *Accordingly, our company has not required making any disclosure pursuant to SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 in case of the aforesaid scrip and as such we have not violated any regulations of the said act”.*

7. 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 February 08, 2010, vide notice dated January 18, 2010. The said hearing notice was received and acknowledged by the Noticee on January 29, 2010. Ms. Bharati Daga appeared as Authorised Representative on behalf of the Noticee. The Noticee submitted that the company has been closed and therefore, the SCN dated July 25, 2008 had been misplaced. The Noticee requested for a copy of SCN. Noticee also submitted to make additional written submissions on the charges leveled in the SCN and requested the undersigned time of 7 days from the date of hearing for submitting the same. The undersigned gave the Noticee a copy of the SCN and also acceded to the request of the Noticee and granted time of 7 days from the date of hearing to submit additional written submission. However, the Noticee did not submit any reply.

CONSIDERATION OF ISSUES AND FINDINGS

8. The issues that arise for consideration in the present case are :
 - a. Whether the Noticee had violated the provisions of regulation 7(1) read with regulation 7(2), regulation 10 of the SAST Regulations, regulation 13(1) and regulation 13(3) read with regulation 13(5) of the PIT

Regulations and regulations 4(1),(2)(a),(b),(e)and(g) of the PFUTP Regulations?

- b. Does the violation, if any, attract monetary penalty under section 15HA, 15A (b) and 15H (ii) of the SEBI Act?
 - c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of the SEBI Act?
9. Before moving forward, it is pertinent to refer to the provisions of SAST Regulations, PIT Regulations and PFUTP Regulations, which reads as under:-

SAST Regulations

2(1) (b) acquirer means any person who, directly or indirectly, acquires or agrees to acquire shares or voting rights in the target company, or acquires or agrees to acquire control over the target company, either by himself or with any person acting in concert with the acquirer;

7. Acquisition of 5 per cent or more shares or voting rights of a company

(1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent] shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.

(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.*

10. Acquisition of fifteen per cent or more of the shares or voting rights of any company

No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such

acquirer to exercise fifteen per cent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the regulations.

PIT Regulations

13. Disclosure of interest or holding by directors and officers and substantial shareholders in a listed company – Initial Disclosure

- (1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company, the number of shares or voting rights held by such person, on becoming such holder, within 4 working 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.*

Continual Disclosure

- (3) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.*

- (5) The disclosure mentioned in sub-regulations (3) and (4) shall be made within 4 working days of:*
- (a) the receipts of intimation of allotment of shares, or*
 - (b) the acquisition or sale of shares or voting rights, as the case may be.*

PFUTP Regulations

4. Prohibition of manipulative, fraudulent and unfair trade practices

- (1) Without prejudice to the provisions of regulation, no person shall indulge in a fraudulent or an unfair trade practice in securities*
- (2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely: -*
- (a) indulging in an act which creates false or misleading appearance of trading in the securities market;*
 - (b) dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss;*
 - (c) ...*

- (d) ...
- (e) *any act or omission amounting to manipulation of the price of a security;*
- (f) ...
- (g) *entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security.*

Upon careful perusal of the charges made against the Noticee, oral submissions of the Noticee and the material available on record I find the following:

Alleged violation of regulation 10 of SAST Regulations

10. Upon analysis of the demat account statements of entities belonging to promoter-group of IPL, I find that on January 8, 2004 and January 09, 2004 (1) Arjunlal N Uttamchandani, (2) Nileshkumar G Uttamchandani, (3) Sureshkumar N Uttamchandani, (4) Maheshkumar N Uttamchandani, (5) Shankerlal N Uttamchandani, (6) Jivanlal N Uttamchandani, (7) Hitendra J Uttamchandani, (8) Kamlaben S Uttamchandani, (9) Rekhaben M Uttamchandani, (10) Shailesh G Uttamchandani and (11) Laxmiben S Uttamchandani (hereinafter collectively referred to as '**promoter group**') transferred 30,77,200 shares constituting 55.38% of the equity capital of the company to the Noticee and Cavalier Securities Limited (hereinafter referred to as '**CSL**') through off market transactions. Upon perusal of documents available on record, I find that 14,14,200 shares constituting 25.45% of the equity capital of the company were transferred by the promoter group to the Noticee and 16.63,000 shares constituting 29.93% of the equity capital of the company were transferred to CSL. The details of the transactions through which 14,14,200 shares constituting 25.45% of the equity capital of the company was transferred to the Noticee which increased the shareholding of the Noticee are given below:

| Date of Transfer | Transferor | Transferee | No. of Shares | % |
|-------------------------|----------------------------------|-------------------|----------------------|--------------|
| January 08, 2004 | Shri Maheshkumar N Uttamchandani | Noticee | 402500 | 7.24 |
| January 08, 2004 | Shri Arjunlal N Uttamchandani | Noticee | 482500 | 8.68 |
| January 08, 2004 | Shri Jivanlal N Uttamchandani | Noticee | 451700 | 8.14 |
| January 08, 2004 | Ms. Kamlaben S Uttamchandani | Noticee | 37500 | 0.67 |
| January 08, 2004 | Ms. Rekhaben M Uttamchandani | Noticee | 30000 | 0.54 |
| January 08, 2004 | Shri Hitendra J Uttamchandani | Noticee | 10000 | 0.18 |
| | Total | | 1414200 | 25.45 |

11. I find that in July 2004 the promoter group received back 24,23,296 shares, being 43.61% of the equity capital of the company from the Noticee and CSL. From January to July 2004, Noticee and CSL collectively off-loaded 6,53,904 shares in the market.
12. On July 08, July 09 and July 10, 2004 Noticee re-transferred 11,15,000 shares constituting 20.07% of the shares of IPL to the promoter group. The details of the transactions by which the shares were retransferred are given below:

| Date of Transfer | Transferor | Transferee | No. of Shares | % |
|-------------------------|-------------------|----------------------------------|----------------------|----------|
| July 08, 2004 | Noticee | Shri Maheshkumar N Uttamchandani | 402500 | 7.24 |
| July 09, 2004 | Noticee | Shri Arjunlal N Uttamchandani | 482500 | 8.68 |
| July 08, 2004 | Noticee | Ms. Rekhaben M Uttamchandani | 30000 | 0.54 |
| July 09, 2004 | Noticee | Shri Jivanlal N Uttamchandani | 129383 | 2.32 |
| July 10, 2004 | Noticee | Shri Jivanlal N | 70617 | 1.27 |

| | | | | |
|--|--------------|---------------|------------------|--------------|
| | | Uttamchandani | | |
| | Total | | 11,15,000 | 20.07 |

The aforesaid transfers reduced the shareholding of the Noticee from 25.45% to 5.40% of the total shares of IPL

13. I note that in terms of Section 10 of the Depositories Act, 1996, the beneficial owner is the person whose name is recorded as such with a depository and is entitled to all the rights and benefits and also subjected to all liabilities in respect of its/securities held by a depository. As per Section 41(3) of the Companies Act, 1956, every person holding shares of a company and whose name is entered as beneficial owner in the records of the depository shall be deemed to be a member of the concerned company. Further, as per Section 152A of the said Act, the register and index of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996, shall be deemed to be an index of members and register and index of debenture holders, as the case may be. Therefore, the presence of shares in a depository account is a sine quo non for any individual/entity to declare that he is a shareholder of the company. Further, any transfer of securities from the beneficial owner account would be construed as change in ownership in respect of those securities which have been transferred to another beneficiary account.

14. I find that the promoter group had transferred a total of 14,14,200 shares constituting 25.45% of share capital of IPL which were in demat form in favour of the Noticee on January 08, 2004 and Noticee retransferred a total of 11,15,000 shares constituting 20.07% of share capital of IPL on July 08, 2004, July 09, 2004 and July 10, 2004 to the promoter group which indicates that the ownership of the shares had been transferred in the names of the parties. I find that the parties became the rightful owners of the said shares in IPL. Moreover, no specific exemption is provided for such transfer/retransfer of shares under regulation 3 of SAST Regulations.

In view of this, the acquisition of 25.45% shares on January 08, 2004 by the Noticee is more than the threshold limit specified under regulation 10 of SAST Regulations and therefore, Noticee ought to have made a public announcement. The Noticee failed to do so. I conclude that the transfer of shares to the account of the Noticee from the promoter group would amount to acquisition of shares by the Noticee in terms of the SAST Regulations.

15. In view of the above, the allegation of violation of regulation 10 of SAST Regulations stands established. The Noticee, therefore, ought to have made public announcement as per the provisions of SAST Regulations. However, the Noticee failed to do so. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under section 15H (ii) of the SEBI Act.

16. The provisions of section 15H(ii) of SEBI Act is reproduced hereunder:

15H. Penalty for non-disclosure of acquisition of shares and takeovers

If any person, who is required under this Act or any rules or regulations made thereunder, fails to, -

(i)....

(ii) make a public announcement to acquire shares at a minimum price; or

he shall be liable to a penalty of twenty five crore rupees or three times the amount of profits made out of such failure, whichever is higher.

Alleged violation of regulation 7(1) read with regulation 7(2) of SAST Regulations

17. Regulation 7(1) read with regulation 7(2) of SAST Regulations deals with disclosure of number and percentage of shares/voting rights to the company by an acquirer who acquires shares or voting rights which (taken together with shares or voting rights, if any held by him) would entitle him to more than

5% shares or voting rights in a company, in any manner whatsoever, within two working days of , viz., the receipt of intimation of allotment of shares as well as the acquisition of shares or voting rights, as the case may be.

18. In the instant case, I find that on January 08, 2004, the Noticee acquired 14,14,200 shares from the promoter group constituting 25.45% of the total shares of IPL which is more than the 5% threshold specified in regulation 7(1) of SAST Regulations. As the acquisition had taken place on January 08, 2004 the due date for compliance under regulations 7(1) and 7(2) of SAST Regulations was January 12, 2004. The Noticee has not made the disclosure to the company i.e. IPL. Therefore, the allegation of violation of regulation 7(1) read with regulation 7(2) of SAST Regulations stands established.

Alleged violation of regulation 13(1) and regulation 13(3) read with regulation 13(5) of PIT Regulations

19. In terms of regulations 13(1) of PIT Regulations any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company, the number of shares or voting rights held by such person, on becoming such holder, within 4 working 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.

20. In the instant case, as on January 08, 2004, with the transfer of 14,14,200 shares from the promoter group, the shareholding of the Noticee increased by 25.45%. The Noticee was required to comply with regulation 13(1) of PIT Regulations which mandates disclosure by any person who holds more than 5% shares or voting rights in any listed company. The due date for compliance was January 14, 2004. I find that the Noticee did not make the disclosure under section 13(1) of PIT Regulations to IPL.

Therefore, the allegation of violation of regulation 13(1) of PIT Regulations stands established.

21. In terms of regulation 13(3) of PIT Regulations, any person who holds more than 5% of shares or voting rights in a listed company is required to disclose to the company the number of shares or voting rights held and change in shareholding or voting rights under two circumstances as detailed below:

- If such change results in shareholding falling below 5%:
- If there has been change in such holdings from the last disclosure made under regulation 13(1) or under regulation 13(3) and such change exceeds 2% of total shareholding or voting rights in the company.

22. In terms of regulation 13(5) of PIT Regulations, the disclosure mentioned in sub-regulations (3) and (4) shall be made within 4 working days of:

- (a) the receipts of intimation of allotment of shares, or
- (b) the acquisition or sale of shares or voting rights, as the case may be.

23. In the instant case, as on January 08, 2004, with the transfer of 14,14,200 shares, from the promoter group the shareholding of the Noticee increased by 25.45%. The Noticee was required to make a disclosure under regulation 13(3) read with regulation 13(5) of PIT Regulations to the company i.e. IPL as there was a change in the shareholding exceeding 2% of the total shares of the company. The due date for compliance was January 14, 2004. The Noticee did not make the disclosure.

With the transfer of 432500 shares on July 08, 2004 the shareholding of the Noticee reduced by 7.78%. The Noticee was required to make a disclosure to IPL under regulation 13(3) read with regulation 13(5) of PIT Regulations i.e. as there was a change in the shareholding exceeding 2% of the total shares

of the company. The due date for compliance was July 14, 2004. The Noticee did not make the disclosure.

Again with the transfer of 611883 shares on July 09, 2004 the shareholding of the Noticee reduced by 11%. The Noticee was required to make a disclosure to IPL under regulation 13(3) read with regulation 13(5) of PIT Regulations i.e. as there was a change in the shareholding exceeding 2% of the total shares of the company. The due date for compliance was July 15, 2004. The Noticee did not make the disclosure.

Therefore, the allegation of violation of regulation 13(3) read with regulation 13(5) of PIT Regulations stands established in the above three instances.

24. In Appeal No. 66 of 2003 - *Milan Mahendra Securities Pvt. Ltd. Vs SEBI* – Order dated April 15, 2005 the Hon'ble SAT has observed that, *“the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market.”*

25. The Noticee, therefore, ought to have made relevant disclosures to the company as per the provisions of SAST Regulations and PIT Regulations. However, the Noticee failed to do so. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under section 15A (b) of the SEBI Act.

26. The provisions of section 15A (b) of SEBI Act is reproduced hereunder:

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)...

(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within

the time specified therefore in the regulations, 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.

27. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216 (SC) held that “*once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow*”.

28. While determining the quantum of monetary penalty under section 15H(ii) and section 15A(b) , I have considered 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.”*

29. On perusal of the various provisions of the SAST Regulations, it is observed that the open offer process includes appointment of a SEBI registered merchant banker as manager to the offer, determination of offer size and price, opening of an escrow account, making public announcement in newspapers, filing of offer document with SEBI, dispatch of offer document to the eligible share holders, etc. By not having complied with the mandatory requirement of the SAST Regulations, the Noticee has avoided the expenditure which otherwise they would have incurred towards cost of engaging the services of a Merchant Banker, making public announcement in newspapers, filing of offer document with SEBI, dispatch of offer document to the eligible share holders, etc.

30. The object of the PIT Regulations and SAST Regulations mandating disclosure of acquisition/sale beyond certain quantity is to give equal treatment and opportunity to all shareholders and protect their interests. To translate this objective into reality, measures have been taken by SEBI to bring about transparency in the transactions and it is for this purpose that dissemination of full information is required. The disclosure assumes all the more significance as the same was transacted through off market. Since the transaction had taken place off market, it is all the more important for the Noticee to have disclosed the same in a timely manner to the company, so that it could have brought it to the knowledge of the public in time. The purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market. The Noticee could not pre-judge the reaction of the investors. However, by virtue of the failure on the part of the Noticee to make the necessary disclosures on time, the fact remains that the investors were deprived of the important information at the relevant point of time. In other words, by not complying with the regulatory obligation of making the disclosure, it had concealed the vital information from the investors. It may not be possible to ascertain the exact monetary loss to the investors on account of default by the Noticee. The Noticee failed to make the disclosures at different points of time. This reflects the repetitive nature of default by him.

Alleged violation of regulation 4(1),(2)(a),(b),(e)and(g) of PFUTP Regulations

31. The scrip of IPL was listed at Bombay Stock Exchange (BSE), Ahmedabad Stock Exchange (ASE) and Vadodara Stock Exchange (VSE) however, during the period of investigation i.e. December 05, 2003 to January 28, 2004 it got traded at BSE only. The price volume data recorded at BSE during the period of investigation is as below:

| (Face Value Rs. 10) | | | | | |
|----------------------------|-------------|-------------|------------|--------------|---------------|
| Exchange | Open | High | Low | Close | Volume |
| BSE | 1.93 | 14.40 | 1.55 | 6.38 | 8,38,426 |

| | | | | | |
|--|-------------|-------------|-------------|-------------|--|
| | (5/12/2003) | (16/1/2004) | (8/12/2003) | (28/1/2004) | |
|--|-------------|-------------|-------------|-------------|--|

32. The shares of the company were trading irregularly and the price was in the range of ₹ 0.98 to ₹ 2.82 before the investigation period. During the investigation period, the shares of the company were traded on the BSE in 32 days for 8,38,426 shares and the share price had increased from ₹ 1.93 to reach the peak of ₹ 14.40 on January 16, 2004.

33. Noticee is a member of ASE and its SEBI Registration No. is INB020916939. Noticee received 14,14,200 shares (25.45% of paid up capital) from the promoters on January 08, 2004. However, from the documents available on record I find that the Noticee started trading in the market from January 07, 2004. Noticee traded in the scrip of IPL through the broker Parklight Investment Private Limited (hereinafter referred to as '**PIPL**') and bought 1,25,798 shares (15% of the market volume) and sold 2,47,576 shares (29.52% of the market volume). The same can be depicted from the table below:

| Broker | Client | Bought | Bought (%) | Sold | Sold (%) |
|--------|---------|--------|------------|--------|----------|
| PIPL | Noticee | 125798 | 15.00 | 247576 | 29.53 |

Day-wise volume of Noticee

| Date | Quantity Bought | Quantity Bought (%) | Quantity Sold | Quantity Sold (%) |
|-----------|-----------------|---------------------|---------------|-------------------|
| 7/1/2004 | 10700 | 44.86 | 100 | 0.42 |
| 8/1/2004 | 46419 | 66.58 | 15800 | 22.66 |
| 9/1/2004 | 35900 | 64.45 | 10100 | 18.13 |
| 12/1/2004 | 9420 | 64.30 | 0 | 0.00 |
| 13/1/2004 | 300 | 4.54 | 0 | 0.00 |
| 14/1/2004 | 2859 | 39.08 | 0 | 0.00 |
| 15/1/2004 | 2850 | 2.42 | 47500 | 40.39 |
| 16/1/2004 | 9375 | 7.04 | 69726 | 52.37 |
| 19/1/2004 | 2500 | 3.83 | 28150 | 43.14 |

| | | | | |
|-----------|------|-------|-------|-------|
| 20/1/2004 | 0 | 0.00 | 16550 | 72.75 |
| 21/1/2004 | 2550 | 10.57 | 11700 | 48.51 |
| 22/1/2004 | 0 | 0.00 | 25150 | 60.97 |
| 23/1/2004 | 2925 | 5.81 | 13600 | 41.08 |
| 27/1/2004 | 0 | 0.00 | 9200 | 74.80 |

From the above table I find the following:

- From January 07, 2004 Noticee started buying in large quantities and its day-wise volume was ranging upto 66% .At the same time it sold some shares (day wise volume ranging from 0.42% to 18%).
- The board meeting of IPL for taking on record the un-audited quarterly results was held on January 14, 2004. From January 15, 2004, (after the Board meeting of IPL on Jan14, 2004) it started selling the shares in the market. On January 16, 2004 company announced the results and on that day price of the scrip of IPL touched its highest of ₹ 14.40.
- Noticee sold major shares on January 15 and 16, 2004 and the day wise volume on these two days was 43.39% and 52.37% respectively. On net basis Noticee sold 1,21,778 shares during the investigation period.
- Noticee traded through the broker PIPL which placed large buy orders which were subsequently deleted.
- Total 100 orders were placed for 10,07,315 shares and out of that 44 orders were deleted for 7,70,540 shares.

34. In July 2004 (after the investigation period) Noticee retransferred 11,15,000 shares (20.07%) to promoters. From January to July 2004 Noticee and CSL collectively offloaded 6,53,904 shares of IPL in market (1,77,432 shares were offloaded during the period of investigation).

35. From the material available on record, I find that during the period of investigation PIPL bought 1,25,798 shares and sold 2,47,576 shares on behalf of Noticee. Total 100 orders were placed for 10,07,315 shares and out of that 44 orders were deleted for 7,70,540 shares.
36. On a perusal of the price volume data, I find that the share price of the company was gradually increasing even prior to the transfer of shares by the promoters to the aforesaid entities and their subsequent trading. The share price of the company as on December 05, 2003 was ₹ 1.93. Thereafter, the share price gradually increased from ₹1.93 to ₹ 12.24 on January 07, 2004. The promoter group had transferred the shares to the Noticee on January 08, 2004. Pursuant to the said transfers, the share price gradually increased from ₹ 12.24 to ₹ 14.40 i.e. an increase of 17.65%. The increase in the share price during December 05, 2003 to January 07, 2004 was accompanied by low traded volumes, as compared to the period between January 08, 2004 and January 28, 2004. The share price was at its peak at ₹ 14.40 on January 16, 2004. The shares were traded on January 16, 2004 between ₹ 12.53 and ₹ 14.40. The share price had fallen thereafter, during the period of investigation. Therefore, the substantial increase in the share price had happened prior to January 08 and January 09, 2004 before the Noticee had traded in the shares of the company. The major volume in the shares was observed on January 15 and January 16, 2004. Noticee received 14,14,200 shares from the promoter group. Noticee bought 1,25,798 shares and sold 2,47,576 shares. Therefore, it cannot be said that Noticee had offloaded the shares received from the promoter group for the purpose of creating volume. Further, there is no material to support the nature of the trades executed by the Noticee.
37. Regulation 4 (1) prohibits a person from indulging in fraudulent or an unfair trade practice in securities. Regulation 4(2)(a) of PFUTP Regulations 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 Regulations 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) prohibits any act or omission amounting to manipulation of the price of a security. Regulation 4(2)(g) of PFUTP Regulations prohibits from entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security. There is no material on record to establish the alleged manipulative role played by the Noticee. I am also of the view that merely based on certain conjectures one cannot come to the conclusion that the Noticee had played a role in the manipulation of the trading. There has to be some corroborative material on record to prove the allegation of manipulation.

38. In view of the foregoing, the alleged violation of the provisions of PFUTP Regulations by the Noticee, as specified in the SCN dated July 25, 2008, does not stand established.

ORDER

39. After taking into consideration all the facts and circumstances of the case and material available on record, I hereby impose a monetary penalty of ₹ 5,00,000 (Rupees Five Lac Only/-) under section 15H (ii) and ₹ 1,00,000 (Rupees One Lac Only/-) under section 15A(b) of the Act {i.e. a total penalty of ₹ 6,00,000/- (Rupees Six Lac only/-) } on the Noticee which will be commensurate with the default committed by it.

40. 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 shall be forwarded to Mr. Ashish Kumar, Deputy General Manager, Investigations

Department, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4-A, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai-400 051.

41. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: October 27 , 2010

Place: MUMBAI

PARAG BASU

ADJUDICATING OFFICER