

**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**CORAM: ANANTA BARUA, WHOLE TIME MEMBER**

**ORDER**

**Under Section 12(3) of Securities and Exchange Board of India Act, 1992 and Regulation 13 of Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 read with Regulations 27 and 38 of Securities and Exchange Board of India (Intermediaries) Regulations, 2008 - In the matter of Peacock Industries Limited.**

**In respect of:**

| <b>S. No.</b> | <b>Name of the intermediary</b>                            | <b>Registration No.</b> |
|---------------|------------------------------------------------------------|-------------------------|
| 1.            | Nouveau Shares & Securities Limited. (Stock Broker of NSE) | INB230938434            |

**In the matter of Peacock Industries Limited**

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1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted an investigation into the alleged irregularities in the trading in the shares of M/s Peacock Industries Limited. (hereinafter referred to as the “**Peacock/PIL**”) during the period August 23, 2000 to September 26, 2000 for possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”) and various rules and regulations framed thereunder.
2. Investigations, revealed that the scrip of PIL had witnessed upward price movement at NSE during the investigation period i.e. August 23, 2000 to September 26, 2000. On NSE, it was observed that, during Settlement Nos. 2000035N to 2000039N, the scrip opened at Rs. 8.50 on August 23, 2000 and closed at Rs 47.10 on September 19, 2000.

The scrip of PIL witnessed a low of Rs. 6.45 on August 23, 2000 and a high of Rs. 51.20 on September 18, 2000. It was observed that there was irregular trading pattern in the scrip w.r.t the volumes that were traded in the scrip during the investigation period. It was further observed that Nouveau Shares and Securities Limited, a Stock Broker of NSE (hereinafter referred to as '**Nouveau**'/ '**Noticee**') having SEBI Registration no. INB230938434, had a trade concentration of 17.76% on gross basis in the scrip of PIL during the investigation period. The Noticee was also the net seller of 78,248 shares of PIL during the said investigation period and was the top Trading Member (TM) at NSE on net sell basis during the above investigation period. The counterparty TM to the trades of the Noticee was predominantly ISJ Share & Stock Brokers Ltd (Stock Broker of NSE) and hereinafter referred to as ('**ISJ**'). It was observed that Noticee had traded / dealt in the scrip of PIL on NSE on behalf of its client viz. M/s Goyal Investments (Prop:- Arun Goyal) (hereinafter referred to as '**client**') who has predominantly sold the PIL shares during the investigation period.

3. On *prima facie* satisfaction of violation of provisions of SEBI Act, 1992, SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 (hereinafter referred to as "**Stock Broker Regulations**") and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 (since rescinded) (hereinafter referred to as "**PFUTP Regulations, 1995**") by Nouveau, SEBI approved enquiry proceedings against the Noticee on December 06, 2004 under SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (since rescinded)(hereinafter referred to as "**Enquiry Regulations**") for finding out the possible violations of the provisions of SEBI Act, 1992, PFUTP Regulations, 1995 and Stock Broker Regulations by the Noticee. The Enquiry Regulations were repealed w.e.f. the notification of SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as "**Intermediaries Regulations**") and the enquiry proceeding against the Noticee continued in terms of the provisions of Regulations 38(1) and (2) of the Intermediaries Regulations (Repeal & Savings). A show cause notice dated October 06, 2009 (hereinafter referred to as "**SCN-1**") was issued by the Enquiry Officer to Noticee under Regulation 25 read with

Regulation 38 of Securities and Exchange Board of India (Intermediaries) Regulations, 2008. The allegations levelled against the Noticee in the SCN-1 are as under:

“ 5. An analysis of the trading details of the trading member M/s Nouveau during the period under investigation is shown below:

- On 23.08.2000 Pawan Goyal bought 100 shares which were matched by M/s Goyal Investments. As per the details submitted by M/s ISJ Share, the client code 6209 belonged to M/s Goyal Brothers. As per the submissions of M/s Nouveau the client code 1 does not pertain to any of the clients. However, on matching the trading details with the details from the trade log, it can be seen that the counterparty is M/s Goyal Investments.

| Day Date | Trade Number           | Trade time | Trade Price | Trade Qty | Buy Member Name | Sell Member Name | Buy side client A/c code | Sell side client A/c code |
|----------|------------------------|------------|-------------|-----------|-----------------|------------------|--------------------------|---------------------------|
| 23-8-00  | 200,008,230,644,468.00 | 15:03:55   | 8.45        | 100       | ISJ SHARE       | NOUVEAU          | 6209                     | 1                         |
| 23-8-00  | 200,008,230,185,975.00 | 10:58:27   | 8.55        | 200       | ISJ SHARE       | NOUVEAU          | 823                      | 1                         |

- On 25.08.2000 Mr. Pawan Goyal sold 44890 shares of which trades of 100 shares were matched by M/s Goyal Investments. The price for both the orders was the same. As per the submissions of M/s Nouveau Share the client code 75 does not pertain to any of the clients. However, on matching the trading details with the details from the trade log it can be seen that the counterparty is M/s Goyal Investments.

| Day<br>Date | Trade Number           | Trade<br>time | Settleme<br>nt<br>Number | Trade<br>Price | Trade<br>Qty | Buy<br>Member<br>Name | Sell<br>Membe<br>r<br>Name | Buy<br>Side.<br>Client<br>A/c<br>code | Sell<br>Side<br>Client<br>A/c<br>code |
|-------------|------------------------|---------------|--------------------------|----------------|--------------|-----------------------|----------------------------|---------------------------------------|---------------------------------------|
| 25-8-00     | 200,008,250,712,474.00 | 15:18:29      | 2000035                  | 13.6           | 100          | NOUVEAU               | ISJ<br>SHARE               | 75                                    | 8056                                  |

- On August 28, 2000 the total quantity traded by the above mentioned Trading Members (TMs) between their two clients namely, Pawan Goyal and Arun Goyal was 93380 constituting 65% of the net market quantity on that day. The two TMs executed the orders for their respective clients at consistently higher prices than the previous day's closing price. The orders were put at Rs 17/-. The previous closing price (on August 25, 2000) was Rs 13.60/-. The trades were executed at the maximum possible trading price permissible on the day (i.e. Rs 13.60 + 25% max price band flex).
- On 29.08.2000 Pawan Goyal sold a total of 14236 shares out of which 9200 shares were bought by M/s Goyal Investments/Arun Goyal trading through the TM M/s Nouveau. As mentioned above while the member, M/s Nouveau claimed that the client code 1 does not pertain to any of the clients, the quantity matched with that of M/s Goyal Investments as submitted in the trading details.

| Day<br>Date | Trade Number           | Trade<br>time | Settleme<br>nt<br>Number | Trade<br>Price | Trade<br>Quantit<br>y | Buy<br>Member<br>Name | Sell<br>Member<br>Name | Buy<br>Side.<br>Client<br>A/c<br>code | Sell<br>Side.<br>Client<br>A/c<br>code |
|-------------|------------------------|---------------|--------------------------|----------------|-----------------------|-----------------------|------------------------|---------------------------------------|----------------------------------------|
| 29-8-00     | 200.008,290,554,141.00 | 15:17:42      | 2000035                  | 19.05          | 9200                  | NOUVEAU               | ISJ<br>SHARE           | 1                                     | 8056                                   |

- On 31.08.2004, Pawan Goyal trading through M/s ISJ Share bought a total of 22706 shares out of which the counterparty for 15200 shares was M/s Goyal Investments trading through the TM M/s Nouveau.

| Day Date | Trade Number           | Trade time | Trade Price | Trade Quantity | Buy Member Name | Sell Member Name | Buy Side. Client A/c code | Sell Side. Client A/c Code |
|----------|------------------------|------------|-------------|----------------|-----------------|------------------|---------------------------|----------------------------|
| 31-8-00  | 200,008,310,150.912.00 | 11:04:43   | 25.8        | 4850           | ISJ SHARE       | NOUVEAU          | 8056                      | G003                       |
| 31-8-00  | 200.008,310,344.659.00 | 13:06:36   | 25.8        | 10350          | ISJ SHARE       | NOUVEAU          | 8056                      | G003                       |

- On 05.09.2000, Pawan Goyal sold a total of 20000 shares of which the counterparty for 8900 shares was M/s Goyal Investments trading through M/s Nouveau. The price for the buy and sell orders was the same.

| Day Date  | Trade Number           | Trade time | Trade Price | Trade Quantity | Buy Member Name | Sell Member Name | Buy Side. Client A/c code | Sell Side. Client A/c code |
|-----------|------------------------|------------|-------------|----------------|-----------------|------------------|---------------------------|----------------------------|
| 5- Sep-00 | 200,009,050,395,587.00 | 13:38:22   | 29.8        | 3100           | NOUVEAU         | ISJ SHARE        | G003                      | 8056                       |
| 5- Sep-00 | 200,009,050,395,589.00 | 13:38:22   | 29.8        | 5800           | NOUVEAU         | ISJ SHARE        | G003                      | 8056                       |

- On 19.09.2000, M/s Goyal Investments bought a total of 5000 shares all of which were matched by M/s Goyal Securities dealing through M/s ISJ Share. The client code 8056 pertaining to Pawan Goyal was used by M/s Goyal Securities for which the actual code was 6229.

| Day Date | Trade Number           | Trade time | Settlement Number | Trade Price | Trade Qty | Buy Member Name | Sell Member Name | Buy Side. Client A/c code | Sell Side. Client A/c code |
|----------|------------------------|------------|-------------------|-------------|-----------|-----------------|------------------|---------------------------|----------------------------|
| 19-9-00  | 200,009,190,663,921.00 | 14:21:10   | 2000038           | 53.6        | 5000      | NOUVEAU         | ISJ SHARE        | G003                      | 8056                       |

6. In case of Shri Sudhir Joshi too certain deals were observed for which the counterparty clients were known to the client as well as to each other. On 23.08.2000 Mr. Sudhir Joshi bought a total of 200 shares for which the counterparty was Mr. Pawan Goyal trading through M/s ISJ Share. The client code 823 was also used by Mr. Sudhir Joshi for which the actual code was 8723. As mentioned above, while the TM, M/s Nouveau claimed that the client code did not pertain to any of the clients, the quantity matched with that of M/s. Goyal Investments as submitted in the trading details.

| Day<br>Date | Trade Number           | Trade<br>time | Settlement<br>Number | Trade<br>Price | Trade<br>Qty | Buy<br>Member<br>Name | Sell<br>Member<br>Name | Buy<br>Side.<br>Client<br>A/c<br>code | Sell<br>Side.<br>Client<br>A/c<br>code |
|-------------|------------------------|---------------|----------------------|----------------|--------------|-----------------------|------------------------|---------------------------------------|----------------------------------------|
| 23-8-00     | 200,008,230,185,975.00 | 10:58:27      | 2000035              | 8.55           | 200          | ISJ<br>SHARE          | NOUVEAU                | 823                                   | 1                                      |

- On 29.08.2000, Mr. Sudhir Joshi sold a total of 4500 shares of which the counterparty client for 4451 shares was M/s Goyal Investments trading through M/s Nouveau. The price for both the buy and the sell orders was the same in the first case. As mentioned above while the member, M/s Nouveau claimed that the client code does not pertain to any of the clients, the quantity matched with that of M/s. Goyal Investment as submitted in the trading details.

| Day<br>Date | Trade Number           | Trade<br>time | Settlement<br>Number | Trade<br>Price | Trade<br>Qty | Buy<br>Member<br>Name | Sell<br>Member<br>Name | Buy<br>Side.<br>Client<br>A/c<br>code | Sell<br>Side.<br>Client<br>A/c<br>code |
|-------------|------------------------|---------------|----------------------|----------------|--------------|-----------------------|------------------------|---------------------------------------|----------------------------------------|
| 29-8-00     | 200,008,290,223,475.00 | 11:58:08      | 2000035              | 20.5           | 1550         | NOUVEAU               | ISJ<br>SHARE           | 4                                     | 8723                                   |

|         |                        |          |         |      |      |         |              |   |      |
|---------|------------------------|----------|---------|------|------|---------|--------------|---|------|
| 29-8-00 | 200,008,290,225,820.00 | 11:59:06 | 2000035 | 20.1 | 2901 | NOUVEAU | ISJ<br>SHARE | 1 | 8723 |
|---------|------------------------|----------|---------|------|------|---------|--------------|---|------|

In the case of M/s Nouveau, there were 8 cross deals involving 4600 shares executed by the member during the period of investigation when the client, M/s Goyal Investments appeared on both sides.

7. As is evident from the above instances, M/s Nouveau has used multiple codes viz. 1, 4, 75, G003 etc. for the same client. In the case of dealings of the member at NSE it is seen that a number of different client codes were used for the same clients i.e. M/s Goyal Investments/Arun Goyal. Solitary instances of such a kind could be termed as oversight. However, frequent use of diverse codes for the above clients appears to have been done deliberately to secure that numerous cross and structured deals between related clients do not get noticed by the exchange authorities.
8. From the ledger account of M/s Goyal Investments in the books of Nouveau it was observed that there was a huge credit balance in the account for about half of the year. In other words, M/s Goyal Investments was keeping substantial funds with the brokers for about 6 months from April to September, 2000. Although there is no entry of payment of interest by the broker to M/s Goyal Investments in the a/c there is one credit entry of Rs. 3,30,000/- on 17.2.2001 on account of "Brokerage Refund". This appears to be in lieu of the interest due to M/s Goyal Investments on the huge funds kept with the broker. From the above, it is clear that there was some sort of financing arrangement between the member and M/s Goyal Investments. It was also noticed that there were two entries of Rs. 6,215/- and Rs. 2,070/- on 27/7/2000 and 31/7/2000 where the account of M/s Goyal Investments has been debited by the broker on account of interest (*for 7 days on Rs.9 lakhs and for 7 days on Rs.3 lakhs*). As submitted by the broker, M/s Nouveau the interest levied of Rs. 2,070 and Rs. 6,215 was for late realization of cheques of Rs. 3 lakhs and Rs. 9 lakhs issued on 19.07.2000 and 24.07.2000 which were dishonoured on presentation. As a logical corollary to this, it follows that M/s Nouveau will have to pay interest to the said client for the retention/delayed payments of sale proceeds of shares traded on his behalf.

As stated above, M/s Goyal Investment has been having substantial credit balance with M/s Nouveau for a period of about 6 months till September, 2000. In view of this the refund of brokerage to the tune of Rs.3,30,000 may well represent the interest element on the funds kept with the broker. The broker

has also debited the account of M/s Goyal Investment on 11/11/2000 and 13/11/2000 by Rs. 16,000/- and Rs.4,000/- respectively towards salary paid to Mahesh Pandya from January, 2000 to May, 2000 @ Rs.4000/- p.m.. In this connection, the broker has explained that Mahesh Pandya was specially looking after the transactions of M/s Goyal Investments on their behalf and hence it was mutually decided that his salary would be reimbursed by M/s Goyal Investments.

9. With regard to the refund of brokerage the broker submitted that based on the volume of business done by the party the brokerage charged earlier was recalculated and a rebate in the brokerage charged was credited to party's account. All stock exchanges have very clear out and well defined bye-laws with regard to the sharing of brokerage and in any case rebate in the brokerage is not allowed under the bye-laws. M/s Nouveau has failed to show that the rebate in brokerage allowed to M/s Goyal Investments was in accordance with the NSE bye-laws. Further, it appears that the rebate in brokerage allowed to M/s Goyal Investments "*based on the volume of business done*" was an unfair trade practice for inducement of clients which is not permitted under the SEBI (*Stock Brokers and Sub Brokers*) Regulations, 1992. Clause C(5) of the Code of Conduct contained in Schedule II under Regulation 7 of the said Regulations clearly states that a stock broker shall not resort to unfair means of inducing clients from other stock brokers. A broker cannot enter into any arrangement with a client whereby special and unusual rates are given with intent to give special or unusual advantage to such client for the purpose of securing his business.
10. It may be mentioned here that it was within the ambit of Nouveau's knowledge that other individuals/entities belonging to the Goyal family were registered with the broking arms of Mr. I.S. Jain both at BSE and NSE. Nouveau should also have taken note of the fact that the client, M/s Goyal Investments was dealing in illiquid scrip in huge volumes without any positive corporate developments. The other clients dealing through M/s Nouveau had dealt in very small quantities compared to M/s Goyal Investments. Thus, from the above findings, it can be inferred that M/s Nouveau has aided and abetted its client in:
  - dealing in securities with the intention of artificially raising the prices of securities and thereby inducing the trading of securities;
  - indulging in acts calculated to create a false or misleading appearance of trading in securities market &

- indulging in acts which resulted in reflection of prices of securities based on non-genuine trade transactions.

and thereby violated the provisions of Regulation 4(a), 4(b) and 4(c) of the SEBI (*Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets*) Regulations, 1995. By failing to act with due skill, care and diligence in the conduct of their business and by engaging in various other acts as brought out in paras 6 to 9 above, M/s Nouveau has violated the provisions of Clauses A(2), A(3), A(4) and C(5) of Schedule II under Regulation 7 of the SEBI (*Stock Brokers and Sub Brokers*) Regulations, 1992.”

4. The “Designated Authority” (hereinafter referred to as “**DA**”) appointed under the Intermediaries Regulations in the matter, submitted enquiry report dated March 31, 2021, with following recommendations:

**“RECOMMENDATION**

*“Therefore, considering the above observations/findings against the Noticee and also keeping in mind the fact that Noticee as Trading Member has been suspended by NSE since November 2006 and continues to remain suspended even as on date, I, in terms of Regulation 27 of the Intermediaries Regulations, recommend that a warning may be issued to the Noticee, in the facts and circumstances of the case and for its lapses, as observed in the preceding paragraphs of the report.”*

5. On the basis of the aforesaid enquiry report, the matter was placed before me for approval of issuance of show cause notice on July 27, 2021. Thereafter, a show cause notice dated August 11, 2021 (hereinafter referred to as “**SCN-2**”) was issued under Regulation 27(1) of the Intermediaries Regulations, calling upon the Noticee to show cause as to why action as recommended in the enquiry report or any other action as deemed fit by the competent authority should not be taken against it in terms of Regulation 27 of the Intermediaries Regulations. SCN-2 issued to the Noticee returned undelivered. Subsequently, upon verification of MCA website, a new address with email id was found. SCN was delivered to

the Noticee on the email on September 25, 2021 and on the new address though SPAD on September 27, 2021. Noticee did not file any reply to SCN-2. As mentioned above, in the present matter SCN-1 dated October 06, 2009 was issued to Noticee under the Intermediaries Regulations. At that time, the Intermediaries Regulations did not have a provision of personal hearing before the DA. With effect from January 21, 2021 the Intermediaries Regulations have been amended which provides for hearing before the DA and hearing before the Designated Member has been confined only to cases in which the Designated Authority has recommended cancelation of certificate of registration or the Designated Member is of the prima facie view that it is a fit case for cancellation of certificate of registration. Thereafter on March 31, 2021, the DA has submitted the Enquiry Report recommending that a warning may be issued to Nouveau which is one of the actions which can be recommended under Regulation 26 of the Intermediaries Regulations (amended). Though the Enquiry Report was submitted after the amendment to the Intermediaries Regulations, no opportunity of personal hearing was granted to the Noticee by the DA. Having regard to principles of natural justice, it was decided that an opportunity of personal hearing be granted to the Noticee before me. The matter was placed before me for granting an opportunity of personal hearing to the Noticee on October 25, 2021 and an opportunity of personal hearing was granted to the Noticee on December 15, 2021. The Noticee did not avail the opportunity of personal hearing on the said date and accordingly hearing qua the Noticee was concluded.

**Consideration of issues and findings:**

6. I have gone through the SCN-1, enquiry report and SCN-2. On perusal of all these documents, I find that the allegation against the Noticee is that it aided and abetted its client in:
- dealing in securities with the intention of artificially raising the prices of securities and thereby inducing the trading of securities;
  - indulging in acts calculated to create a false or misleading appearance of trading in securities market &

- indulging in acts which resulted in reflection of prices of securities based on non-genuine trade transactions.

and thereby violated the provisions of Regulation 4(a), 4(b) and 4(c) of the SEBI (*Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets*) Regulations, 1995.

7. It is also alleged that the Noticee failed to act with due skill, care and diligence in the conduct of their business and violated the provisions of Clauses A(2), A(3), A(4) and C(5) of Schedule II under Regulation 7 of the Stock Brokers Regulations, due to the following:
- a. Noticee by refunding the excess brokerage amount of Rs. 3.3 lakhs to its client resorted to unfair means of inducing clients from other stock-brokers.
  - b. Noticee by debiting the client ledger for transactions other than securities market operations.
8. The relevant extracts of the provisions of law allegedly violated by the Noticee are mentioned as under:-

### **PFUTP Regulations, 1995**

#### ***Prohibition against Market Manipulation***

##### ***4. No person shall -***

- (a) effect, take part in, or enter into, either directly or indirectly, transactions in securities, with the intention of artificially raising or depressing the prices of securities and thereby inducing the sale or purchase of securities by any person;*
- (b) indulge in any act, which is calculated to create a false or misleading appearance of trading on the securities market;*
- (c) indulge in any act which results in reflection of prices of securities based on transactions that are not genuine trade transactions;*

### **Stock Broker Regulations**

#### ***SCHEDULE II***

#### ***CODE OF CONDUCT FOR STOCK BROKERS***

##### **A. General.**

- (2) Exercise of due skill and care: A stock-broker shall act with due skill, care and diligence in the conduct of all his business.*
- (3) Manipulation: A stock-broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumors with a view to distorting market equilibrium or making personal gains.*
- (4) Malpractices: A stock-broker shall not create false market either singly or in concert with others or indulge in any act detrimental to the investors interest or which leads to interference with the fair and smooth functioning of the market. A stockbroker shall not involve himself in excessive speculative business in the market beyond reasonable levels not commensurate with his financial soundness.*

**C. Stock-Brokers vis-a-vis Other Stock-Brokers**

- (5) Inducement of Clients: A stock-broker shall not resort to unfair means of inducing clients from other stock-brokers.*

9. In the enquiry report, the Enquiry Officer/Designated Authority the allegation against the Noticee that it had aided and abetted its client in executing the 114 structured trades/deals for manipulating the price of the scrip of PIL during the investigation period was found without any merit and unsustainable based on the following observations:

- a. As Trading Member, Noticee has not contributed significantly to the price rise in the scrip of PIL during the investigation period. On August 23, 2000 and August 25, 2000, the LTP contribution as a result of the alleged structured deals by the Noticee was 5.56% and 3.03%, which is not significant when compared to the market wide close to close variation of 49.12% and 50.28% on August 23, 2000 and August 25, 2000, respectively. Further, on August 28, 2000, when the contribution to the total market volume of the structured deals by the Noticee was the highest viz. 64.55%, the LTP contribution of the Noticee was Zero on the said date. On rest of the days, Noticee's contribution to the LTP is either negative or not significant enough when compared with the total change in the scrip price on that day.

- b. The order log for the alleged structured trades entered between ISJ and the Noticee on behalf of their clients, has been provided only for August 28, 2000, by the concerned department and the same has not been provided for other days when Noticee had traded/dealt in the scrip of PIL.
- c. The order log/trade log analysis furnished by IVD for August 28, 2000 is not adequate to prove beyond doubt that the Noticee was aware and/or could have even doubted that the orders which were being placed on behalf of its client were majorly matching with the orders of ISJ.
- d. The remaining alleged structured trades/deals during the entire investigation period, only trade log has been provided by the concerned department as the evidence, which does not contain the details of the time, size and price of the orders placed by either the Noticee or ISJ. It also does not contain the trades/orders placed by other TMs/clients (i.e. other than Noticee & ISJ and their clients) in the scrip of PIL during the relevant period. In the absence of such evidence, it is not possible to establish any pattern in respect of the alleged structured trades/deals executed between the Noticee and ISJ.
- e. Noticee's trades were also not the first trade of the day (i.e. on August 28,2000) as there was time gap of almost 4 hours from the trades of ISJ and also that the sell orders placed by the Noticee were scattered i.e. orders placed by Noticee from 13:43:33 hrs to 14:46:37 hrs.
- f. The DA has also referred to the following case laws in the Enquiry Report:  
Hon'ble Supreme Court's Order dated February 08, 2018 in the matter of SEBI vs Rakhi Trading Pvt. Ltd., wherein following was observed:

*"As far as brokers are concerned, we are of the view that there is hardly any evidence on their involvement so as to proceed against them for violation of Regulation 7A of*

*the Brokers Regulations and PFUTP Regulations. Merely because a broker facilitated a transaction, it cannot be said that there is violation of the Regulation. SEBI has not provided any material to suggest negligence or connivance on the part of the brokers. As held by this Court in Kishore R. Ajmera (supra), there are several factors to be considered. We would especially like to refer to the case of Angel Trading wherein the broker repeatedly wrote to the National Stock Exchange informing them about trades in the options segment that were executed at unrealistic prices and requesting them to put in mechanisms in the Options segment so that these trades are not allowed to enter the system. In the absence of any material provided by SEBI to prove the charges against the brokers, particularly regarding aiding and abetting fraudulent or unfair trade practices, we are of the opinion that the orders of SEBI against the brokers should be interfered with. Accordingly, the appeals filed against the brokers are dismissed".*

- g. Further, Hon'ble SAT in the matter of Kishore R. Ajmera vs. SEBI, Appeal No. 13 of 2007 decided on February 5, 2008 made observations as under:-

*"Merely because two clients have executed matched trades, it does not follow that their brokers were necessarily a party to the game plan. On a screen based trading through the price order matching mechanism of the exchange, it is not possible for either of the brokers (or sub-brokers) to know who the counter party or his broker (or sub broker) is and when the trade is executed, their names or codes do not appear on the screen."*

- h. The Designated Authority has observed that there is no evidence to show that Noticee had connived with ISJ in executing the alleged structured trades/deals in the scrip of PIL during the investigation period. Merely because the clients of any stock broker have done a fraudulent trade, it does not mean that the stock broker is also an accomplice in such manipulation. For this to happen, the order log for the relevant period should establish a pattern to show that Noticee was aiding and abetting its clients for executing structured deals. Thus, it has to be proved that the stock broker was indeed aware that such trades are fraudulent or done with malicious intent. Without examining the pattern of the orders and trades for the

entire period, the Noticee as a stock broker, cannot be faulted for trades done by its client with fraudulent intentions. Therefore, the evidence made available in the instant matter is not sufficient to show that the Noticee was aware that the 114 trades/deals between its client viz. M/s Goyal Investment (Prop: Arun Goyal) and clients of ISJ were structured.

10. I note that the main allegation in the instant matter is that Nouveau was involved in the structured trades with another Trading Member i.e. ISJ on behalf of its client Goyal Investments. I note that the order log of only one day i.e. August 28, 2000 out of the entire Investigation Period is available on record and for the remaining days only the trade logs are available which do not contain the order placement analysis. In view of this circumstantial evidence in the form of trades does not give rise to any inference of any nexus between the Noticee and the client or the counter party broker. Further, the SCN-2 does not bring out any other proof to show that the Noticee connived with his client and another Trading Member i.e. ISJ for executing structured trades in the scrip of PIL. As regards, the decision of Hon'ble SAT in the matter of Kishore R. Ajmera vs. SEBI (Appeal No. 13 of 2007) dated February 05, 2008 referred in the Enquiry Report, I note that in the said order, Hon'ble SAT held that the charges against the broker Kishore R. Ajmera are not substantiated in the absence of any direct proof or evidence showing the involvement of the sub-broker in allegedly matching the trades and thereby creating artificial volumes of trading resulting in unnatural inflation of the price of the scrip. I further note that the said observation stands modified by Hon'ble Supreme Court's decision dated February 23, 2016 in SEBI vs. Kishore R. Ajmera & Ors. as follows:

*"It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are*

*founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion.”*

The aforesaid observation was also relied upon by Hon'ble Supreme Court in its decision dated February 08, 2018 in the matter of SEBI vs Rakhi Trading Pvt. Ltd. wherein the following was observed:

*“Findings must be gathered from patterns of trading data and the nature of the transactions etc. Several circumstances of a determinative character coupled with the inference arising from the conduct of the parties in a major market manipulation could reasonably lead to conclusion that the Broker was responsible in the manipulation. The evidence, direct or circumstantial, should be sufficient to raise a presumption in its favour with regard to the existence of a fact sought to be proved. As pointed out by Best in "Law of Evidence", the presumption of innocence is no doubt presumption juris; but everyday practice shows that it may be successfully encountered by the presumption of guilt arising from circumstances, though it may be a presumption of fact. Since it is exceedingly difficult to prove facts which are especially within the knowledge of parties concerned, the legal proof in such circumstances partakes the character of a prudent man's estimate as to the probabilities of the case.”*

11. Applying the test laid down in Kishore R. Ajmera case to the present case, I find that in the present case no direct or circumstantial evidence leads to an inference that the Noticee was at fault for trades done by its client. Thus, I agree with the finding in the Enquiry Report that without examining the pattern of the orders and trades for the entire period, the Noticee as a stock broker, cannot be faulted for trades done by its client with fraudulent intentions. Therefore, the allegation against the Noticee that it aided and abetted its client in executing 114 structured trades/deals for manipulating the price of the scrip of PIL during the investigation period is unsustainable.
12. I further note that SEBI vide order dated December 31, 2009 held that the client of the Noticee i.e. M/s Goyal Investments and other connected entities i.e. Mr. Pawan Kumar Goyal, M/s Goyal Investments, M/s Goyal Brothers (Proprietor, Mr. Arun Goyal) and Goyal

Securities (Proprietor, Mr. Vinod Goyal) have violated Regulations 4(a), 4(b) and 4(c) of PFUTP Regulations, 1995 and restrained them from accessing securities market and further prohibit them from buying, selling or dealing in securities, directly or indirectly for, for a period of one year. I note that in the SEBI order dated December 31, 2009 the aforesaid entities admitted the execution of matched trades and cross deals and did not dispute or controvert the same. I note that the analysis of the orders placed by these entities including the orders placed by the client of the Noticee i.e. Goyal Investments is not available in the order dated December 31, 2009 passed by SEBI against these entities. In these peculiar circumstances wherein no determination on merits regarding the nature of these trades is there in SEBI order dated December 31, 2009, determination made in the said order with respect to the noticees therein cannot be used to term these trades as structured trades in these proceedings.

13. As regards, the allegation of executing self-trades against the Noticee, it is observed in the Enquiry Report that Noticee had executed the self-trades for total 4600 shares on three days i.e for 1000 shares on August 25, 2000, for 2900 shares on August 28, 2000 and for 700 shares on August 29, 2000. The total gross quantity of shares traded in PIL by Top Ten Trading Members (hereinafter referred to as “**TMs**”) during the investigation period at NSE was 12,07,110 shares out of which the self-trades for total 4600 shares executed by the Noticee work out to be 0.38%. The DA observes that considering the miniscule volume of self-trades by the Noticee i.e. even after reckoning the total gross volume for top ten TMs on NSE (and not for the entire volume on NSE), the violation by itself is not significant enough to warrant any enforcement action against the Noticee.
14. I note that the self-trades executed by the Noticee on behalf of its client Goyal Investments, wherein the said client appeared both on the buy side and sell side of the transaction were miniscule in comparison to the total traded quantity of shares in the market. The details of the self-trades executed as provided in the Enquiry Report are as follows:

| Date        | Close Price | % Variation of Close to Close Price | Total Traded Qty (One Side) | Noticee Buy Trd Qty | Noticee Sell Trd Qty | Noticee on both sides | % of Noticee trades to Mkt Gross (Both sides) |
|-------------|-------------|-------------------------------------|-----------------------------|---------------------|----------------------|-----------------------|-----------------------------------------------|
| 25-Aug-2000 | 13.60       | 50.28                               | 60050                       | 2300                | 4600                 | 1000                  | 5.7%                                          |
| 28-Aug-2000 | 16.60       | 22.06                               | 144670                      | 3000                | 136200               | 2900                  | 48.1%                                         |
| 29-Aug-2000 | 19.35       | 16.57                               | 138487                      | 73126               | 800                  | 700                   | 26.7%                                         |

I note that on August 28, 2000, Noticee executed self-trades for 1000 shares which works out to be 1.6% of the total traded quantity on that day .i.e. 60050 shares. On August 28, 2000, the Noticee executed self-trades for 2900 shares which works out to be 2% of the total traded quantity on that day .i.e. 144670 shares and on August 29, 2000, the Noticee executed self-trades for 700 shares which works out to be 0.9% of the total traded quantity on that day .i.e. 138487 shares. I also note that the SCN-2 does not bring out how these trades resulted into price manipulation of PIL scrip on those days.

15. Regulation 4(b) of PFUTP Regulations, 1995 provides that no person shall indulge in any act, which is calculated to create false or misleading appearance of trading on the securities market. However, having regard to trading system prevailing at that time mere occurrence of self-trades need not be considered per se illegal in the absence of any other corroborative evidence to prove that the execution of self-trades resulted into creation of false or misleading appearance of trading in the scrip is inconsequential. I note that the impugned trades in the present case are 21 years old and thereafter there has been changes in the trading systems introduced by law which has done away with the chances of self-trades. In the present case, the self-trades executed by the Noticee no.1 were insignificant in comparison to even the gross quantity of shares traded in PIL scrip by top ten Trading Members at NSE during the investigation period i.e. 0.38% of 12,07,110 shares. I find that such miniscule volume of self-trades cannot be said to have adverse influence on the trading of PIL scrip during the investigation period. Therefore, the allegations against the Noticee no. 1 of indulging into self-trades which are calculated to create false or misleading appearance of trading in PIL scrip do not appear to be substantiated by any evidence.

Therefore, I find that the self-trades executed by the Noticee on behalf of its client Goyal Investments cannot be said to have violated Regulation 4(b) of the PFUTP Regulations, 1995.

16. As regards, allegation of violation Regulation 4(a) and 4(c) of PFUTP Regulations, 1995, I note that SCN-2 does not bring out the effect of the self-trades executed by the Noticee on the price of PIL scrip. Therefore, the allegation of violating Regulation 4(a) and 4(c) of PFUTP Regulations, 1995 cannot be sustained against the Noticee.

17. SEBI made Unique Client Code mandatory for all clients vide Circular ref. SMDRP/Policy/Cir-39/2001 dated July 18, 2001. In view of the same, as regards, the allegation that Noticee indulged in frequent client code modification, the DA has observed that client code modification without any valid reason is not a healthy practice. However, since the impugned trades of the Noticee were before the aforementioned SEBI Circular, the DA took a lenient view w.r.t the alleged violation against the Noticee. I find that the client code modification was carried out by the Noticee for the trades executed prior to the implementation of mandatory Unique Client Code policy through the circular dated July 18, 2001, therefore I am inclined to agree with the observation of the DA in this regard.

18. As regards the allegation that the Noticee by refunding the excess brokerage amount of Rs. 3.3 lakhs to its client resorted to unfair means of inducing clients from other stock-brokers in violation of clause C(5) of the Code of Conduct for Stock Brokers as specified in the Stock Broker Regulations, the DA has found the said allegation unsustainable due to the following reasons:

- a. Investigation report has not brought out any observations w.r.t the total brokerage charged by the Noticee from Goyal Investments for the relevant period and the details of brokerage agreed upon by the parties viz. Noticee and the client and whether the Rs 3.3 lakhs was actually the rebate made by the Noticee to Goyal Investments against the excess brokerage charged by the Noticee from the client.

- b. Without assessing the total component of brokerage collected by the Noticee from the client for its trades in PIL scrip and other scrips during the relevant period, the conclusion drawn in the investigation report that the payment of Rs 3.3 lakhs to the client i.e. Goyal investments is towards brokerage refund is difficult to sustain.
- c. During investigations, the factual position w.r.t the payment of Rs. 3.3 lakhs to Goyal investments should have been ascertained from the Noticee instead of relying upon the entry made by the Noticee in the client ledger of Goyal investments that the same was towards the 'brokerage refund'. There is nothing on record in the investigation report to show that Noticee was asked to justify the payment of Rs 3.3 lakhs made by it to Goyal Investments.

19. In this regard, I note that the Noticee in its reply to SCN-1 dated June 19, 2010 had *inter alia* submitted that they were following industry standards for refund of brokerage and any refund made was based on the volume of trading done by a client. Noticee has further submitted that for a regular trader with high volumes, the brokerage would be charged at a lower rate and all the excess brokerage would be refunded. I note that without bringing out the terms of client-broker agreement, details of brokerage agreed upon by the parties and the total brokerage to be paid by the client to the Noticee for the relevant period, the allegation that the Noticee provided rebate to its client and induced the clients from other stock-brokers is unsustainable. Therefore, I agree with the observations made in the Enquiry Report that the allegation of violating clause C(5) of the Code of Conduct for Stock Brokers as specified in the Stock Broker Regulations against the Noticee is not established.
20. As regards, the allegation that the Noticee by debiting the client ledger for transactions other than securities market operations has violated Clause A(2) of the Code of Conduct for stock brokers as specified in the Stock Broker Regulations, I note that the Noticee has admittedly debited the ledger of its client on 11/11/2000 and 13/11/2000 for Rs. 16,000/- and Rs 4,000/- ,respectively, towards the salary payment made to one Mr. Mahesh Pandya. In view of the

same, I agree with the observations of the DA that the Noticee has failed to exercise due skill and care and diligence in the conduct of its business and violated Clause A (2) of the Code of Conduct for stock brokers as specified in the Stock Broker Regulations.

21. Considering the facts and circumstances of the case and the fact that the Noticee is suspended from NSE for not meeting the capital adequacy requirement with effect from November 01, 2006, and the long period of 21 years which has elapsed when these trades took place in the year 2000, I am of the view that that issue of warning to the Noticee, as recommended, in the facts and circumstances of the case would meet the ends of justice.
22. In view of the above, I, in exercise of the powers conferred upon me in terms of Section 12(3) and 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 27(5) of the Intermediaries Regulations, hereby issue a warning to the Noticee to be careful in future in its dealing in securities as a stock broker.
23. Accordingly, SCN-2 dated August 11, 2021 is disposed of.
24. This Order comes into force with immediate effect.
25. A copy of this Order shall be forwarded to the Noticee.

Sd-

**Place: Mumbai**  
**Date: March 23, 2022**

**ANANTA BARUA**  
**WHOLE TIME MEMBER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**