BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. PKB / AO- 26 / 2011

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

Graceful Advisors Pvt. Ltd.
(Now merged with Vayudoot Commercial Pvt. Ltd.)
PAN: AABCV0266D

And

Shri Hare Krishna Behera, Director of Graceful Advisors Pvt. Ltd.
(Now merged with Vayudoot Commercial Pvt. Ltd.)
PAN: AJEPB8166D

IN THE MATTER OF
M/s G. R. Industries and Finance Limited

I. BACKGROUND

1. A sharp rise in the price of the scrip of M/s. G. R. Industries and Finance Limited (hereinafter referred to as "Company") was witnessed in as much as the price of the scrip went up from ₹ 2.00 to ₹ 170.20 (8500% increase) during the period of five months i.e. from 7.9.2004 to 28.02.2005 at Calcutta Stock Exchange (hereinafter referred to as "CSE").

2. Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted investigation in respect of buying, selling and dealing in the shares of the Company. The period of investigation was from January 1, 2004 to February 28, 2005 (hereinafter referred to as "Investigation Period").

3. The transactions done by the brokers during the Investigation Period constituted 83.30% of the total traded volume in the scrip of the Company at CSE. The details of the said transactions are as follows:

S.No	Name of the broker	Volume Buy/Sell	Traded From (Rs.)	Traded Upto (Rs.)
1.	Bubna Stock Broking Services Ltd	27,46,100	2.00	170.20
2.	Shyamlal Sultania	38,00,099	3.05	170.10
3.	M.Bhiwaniwala & Co	18,59,901	2.25	170.10
4.	Ashokkumar Kayan	11,76,500	6.00	170.10

4. It was observed that M/s. Bubna Stock Broking Services Ltd. (hereinafter referred to as "BSB") had formulated a scheme to manipulate price of the scrip and was aided and executed by other brokers of CSE namely M/s. Shyam Lal Sultania (hereinafter referred to as "SLS"), M. Bhiwaniwala & Co. (hereinafter referred to as "MBC"), and Ashok Kumar Kayan (hereinafter referred to as "AKK"). BSB acquired all or major portion of the shares of the Company in its name and also in the name of several other client companies. The acquisitions were made prior to the price rise period through off market deals at very low prices. Majority of the client companies shared the same office address and directors as that of the broker and scrip Company. This indicated that the client companies including Graceful Advisors Pvt. Ltd. (Now merged with Vayudoot Commercial Pvt. Ltd.) (hereinafter referred to as "Noticee") were the "front" companies of the broker. The broker and its client companies sold their holdings in the market in huge quantities at low prices initially and subsequently the price of the scrip was jacked up in collusion with other brokers. When the prices got pushed to peak rates, the clients who had bought at low prices sold their holdings in the market to book profits. The shares so sold, were purchased by the other set of clients to book loss and avail tax benefits.

5. On the conclusion of investigation by SEBI, Adjudication Proceedings under section 15I of the SEBI Act, 1992 (hereinafter referred to as "Act")

were initiated in respect of the Noticee and its Director, Shri Hare Krishna Behera.

6. Shri D. Sura Reddy was appointed as the Adjudicating Officer vide Order dated January 30, 2008 to inquire into and adjudicate under section 15HA of the Act, the alleged violation of provisions of Regulations 4(2)(a) and (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as "PFUTP Regulations").

7. Pursuant to transfer of Shri D. Sura Reddy, the undersigned was appointed as the Adjudicating Officer vide Order dated December 10, 2008.

II. SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

8. Show Cause Notice (hereinafter referred to as "SCN") dated June 30, 2008 was issued to the Noticee and its Director, Shri Hare Krishna Behera under Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "Adjudication Rules"), calling upon them to show cause why inquiry should not be held against them under Rule 4(3) of the Adjudication Rules for the alleged violations.

9. The SCN issued to the Noticee returned undelivered and was arranged to be delivered through SEBI, Eastern Regional Office (hereinafter referred to as "ERO") vide letter dated August 13, 2008. The Noticee duly received the SCN and acknowledgment of receipt of the same is available on record. The Noticee replied to the SCN vide letter dated July 12, 2008 received on November 3, 2008. The Director of the Noticee, Shri Hare Krishna Behera replied to the SCN vide letter dated September 17, 2008. Thereafter, Notice of Inquiry dated December 22, 2009 was issued to the Noticee and its Director, Shri Hare Krishna Behera under Rule 4(3) of the Adjudication Rules vide which an opportunity of personal hearing was given to them which was scheduled for January 21, 2010. The Notice of Inquiry was also duly delivered by ERO to them and acknowledgment of receipt of same is

available on record. However, subsequently, the Noticee and its Director, Shri Hare Krishna Behera applied for consent in the instant matter.

10. Subsequently, on rejection of the consent application, Notice of Inquiry, each dated October 20, 2010 were issued to the Noticee and its Director Shri Hare Krishna Behera, vide which one more opportunity of hearing was scheduled for November 3, 2010 and the same were delivered by ERO. However, the Noticee and its Director, Shri Hare Krishna Behera vide letters, each dated October 30, 2010 requested to reschedule the hearing. This request was considered and in view of the same, Notice of Inquiry dated November 4, 2010 was issued to the Noticee and its Director, Shri Hare Krishna Behera vide which one more opportunity of hearing was scheduled for November 30, 2010. Both of them did not attend the hearing and sent further submissions vide letter dated November 22, 2010 *inter alia*, indicating some discrepancies in trade data. As, some typographical errors were noticed in the relevant trading data/details provided as Annexure II of the SCN, the revised trading data/details were forwarded to the Noticee and its Director, Shri Hare Krishna Behera as "Annexure A" vide Notice of Inquiry, each dated February 22, 2011. The Notice of Inquiry also provided one more opportunity of hearing on March 10, 2011 and specified that the data enclosed with the Notice would only be considered for the present Adjudication Proceedings and not the data as contained in Annexure II of the SCN. Mr. Pravin Panwar, Authorized Representative of the Noticee attended the hearing on March 9, 2011 and made no further submissions. Further, Mr. Pravin Panwar, Authorized Representative of the Noticee's Director, Shri Hare Krishna Behera attended the hearing and made the following submissions:

"I was appointed Director only on 1.09.2005 i.e. after the period of investigation. Form No. 32 in this regard is enclosed. In addition to that I'm submitting the Board Resolution dated 28.9.2004 wherein it is stated that Mr. Umesh Behera was authorized to do the trades on behalf of the company."

III. ISSUES FOR CONSIDERATION

11. On perusal of the SCN and submissions of the Noticee and its Director I have the following Issues for consideration, viz.,

   1. Whether the Noticee and its Director, Shri Hare Krishna Behera have violated provisions of Regulations 4(2) (a) and (e) of PFUTP Regulations?

   2. Whether the Noticee and its Director, Shri Hare Krishna Behera are liable for monetary penalty under section 15 HA of the Act?

   3. What quantum of monetary penalty should be imposed on the Noticee and its Director, Shri Hare Krishna Behera taking into consideration the factors mentioned in section 15J of the Act?

IV. FINDINGS

12. On careful perusal of the material available on record, I proceed to discuss the Issues for Consideration and my findings are recorded as under:

ISSUE 1: Whether the Noticee and its Director, Shri Hare Krishna Behera have violated provisions of Regulations 4(2) (a) and (e) of PFUTP Regulations?

13. The provisions of Regulations 4(2) (a) and (e) of PFUTP Regulations read,

4. <u>Prohibition of manipulative, fraudulent and unfair trade practices</u>

(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;

(e) any act or omission amounting to manipulation of the price of a security;

14. A sharp rise in the price of the scrip of the Company was witnessed in as much as the price of the scrip went up from ₹ 2.00 to ₹ 170.20 (8500% increase) during the period of five months i.e. from 7.9.2004 to 28.02.2005 at CSE.

15. The transactions done by the brokers during the Investigation Period constituted 83.30% of the total traded volume in the scrip of the Company at CSE. The details of the said transactions are as follows:

S.No	Name of the broker	Volume Buy/Sell	Traded From (Rs.)	Traded Upto (Rs.)
1.	Bubna Stock Broking Services Ltd	27,46,100	2.00	170.20
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16. It is observed that BSB had formulated a scheme to manipulate price of the scrip and was aided and executed by other brokers of CSE namely SLS, MBC and AKK. BSB acquired all or major portion of the shares of the Company in its name and also in the name of several other client companies. The acquisitions were made prior to the price rise period through off market deals at very low prices. Majority of the client companies shared the same office address and directors as that of the broker and scrip Company. This indicates that the client companies including Noticee were the "front" companies of the broker. The broker and its client companies sold their holdings in the market in huge quantities at low prices initially and subsequently the price of the scrip was jacked up in collusion with other brokers. When the prices got pushed to peak rates, the clients who had bought at low prices sold their holdings in the market to book profits. The shares so sold, were purchased by the other set of clients to book loss and avail tax benefits.

17. Further, it is observed that the Noticee had traded through the broker, BSB, who is the main broker behind the alleged scheme of price manipulation as described above. It is also observed that the Noticee's Director, Shri Hare Krishna Behera is also the Director of the scrip Company. Moreover, the Noticee also shares the same address as that of the scrip Company. This establishes a direct link between the Noticee, its Director, broker and scrip Company.

18. Therefore, in the light of the above, it is observed that there was no distinction between the Noticee and the broker BSB. This indicates that the Noticee was virtually being used as a "front company" by BSB to offload the holdings of the Company held by the Noticee for BSB. Therefore, the Noticee was an integral part of the scheme to manipulate the price of the scrip as described above.

19. The Noticee's Director was also director of the scrip Company. Therefore, it is observed that the Noticee and its director, Shri Hare Krishna Behera facilitated BSB (who colluded with other brokers and other clients) to off load their holding, which ultimately generated huge volumes in the scrip at CSE and also hampered normal price discovery. Therefore, it is observed that the Noticee and its director indulged in an act which created false and misleading appearance of trading in the scrip at CSE.

20. Therefore, it is observed that the Noticee's director is also responsible for the conduct of its business and section 27 of the Act explicitly mentions that the directors are liable for the conduct of the company. Further, it is observed that the Noticee and its director acted through its Broker, and managed to manipulate the price as well as create artificial volume in the scrip by being a "front company" of BSB.

21. Now I deal with Noticee's submissions. Vide letter dated July 12, 2008 the Noticee submitted that it had purchased and sold securities in normal course. Vide letter dated November 22, 2010 the Noticee has claimed that the trades were carried out by the Noticee in the ordinary course of the business. However, in view of the findings noted in the preceding paragraphs, I find it difficult to accept Noticee's explanations.

22. The Noticee further submitted that

a. *We are a company that invest in securities like any ordinary investor. Graceful Advisory Services Pvt Ltd along with other entities namely, Millestone Vyapar Pvt Ltd, Mahima Suppliers Pvt Ltd., New Wave Dealers Pvt Ltd., and Hill View Vyapar Pvt Ltd, had with effect from the passing of the order dated 15 May 2007 by the Hon'ble High Court of Calcutta, merged into us. At the relevant time we had executed trades in the scrip of the Company in the ordinary course of business* *dehors sinister intent or design. All the transactions carried out by us were delivery based trades, wherein we had taken the deliveries in the case of purchases and given the deliveries in the case of sale of shares. The said trades were not in the nature of square off trades. All the trading was carried out by us independently, based on our commercial wisdom.*

b. *At the outset, it is submitted that, the charges in the Notice are exceedingly vague, completely contrary to factual position on records and based merely on surmises and conjectures and on erroneous assumptions. The charges in the Notice are erroneously based on the assumption that there is no distinction between us and broker BSB and the company. Based on this assumption it has erroneously been concluded that we have been used as a "front company" by BSB to off load the holdings of the Company held by us for it. It is denied that we were an integral part of any scheme that may have been devised by BSB. It is submitted that we at the time of carrying out any transactions were not aware of any such scheme that is alleged to have been devised by BSB. It is denied that we and our directors aided BSB and the other brokers by allowing them to hold shares in our name. It is submitted that we have transacted independently.*

c. *It is submitted that, we have transacted in the scrip of the Company based on our independent commercial wisdom with no fraudulent intent. It is denied that our transactions could have influenced the price and volume of the scrip of the Company and also it is denied that, we have violated the provisions of the FUTP Regulations.*

d. *It is submitted that, the Notice fails to demonstrate the manner in which we have manipulated the price/ volume of the scrip of the Company. The charge of manipulation of price / volume is based on mere assumption that there is no distinction between us and broker BSB and the company. Mr. Hare Krishna Behera became our director on September 1, 2005 i.e. post the Investigation period. Thus, during the investigation period when Mr. Hare Krishna Behera was not our Director it cannot be concluded that we had any connection with the broker and the company. Further a common address cannot be the basis of alleging connection between us, the broker and the company. Thus, there is nothing concrete in Notice that establishes we have manipulated the price/volume in the scrip of the Company. Simply based on some alleged connection it cannot be assumed that we were used as "front company" and that we were an integral part of some scheme devised by BSB and also, that we had transacted fraudulently.*

e. *In this regard, your attention is invited to the order passed on September 15, 2009 by the Hon'ble Securities Appellate Tribunal in the matter of M/s Swaranganga Trading Pvt Ltd Vs SEBI*

f. *"……… **we are satisfied that the show cause notice that was issued to the appellant was as vague as it could be and did not spell out the charge which the appellant was required to meet**.Para 2 of the show cause notice which has already been reproduced hereinabove only states that the appellant had colluded with certain brokers for transacting in the shares of the company and that it created false and misleading appearance of trading in the scrip. No further details have been provided to the appellant. Who are the brokers with whom the appellant colluded and in what manner did the appellant create a misleading appearance in the trading of the scrip of the company is not spelt out in the show cause notice. On a plain reading in para 2 of the show cause notice it is not possible for the* *delinquent to offer his explanation as the allegations made therein are vague. No doubt the entire investigation report was sent to the appellant alongwith the show cause notice but that does not improve vagueness of the allegation in the show cause notice. The investigation report runs into 78 pages and deals with not only the appellant but with several other entities allegedly involved in the so called manipulation and the role which the appellant is said to have played cannot be spelt out from that report either. More than 30 pages of the report are in the form of charts dealing with the trades executed by different entities and the learned counsel appearing for the Board made a valiant effort in trying to track the trades of the appellant and link them with the trades of some other brokers with a view to establish the charge that the appellant had executed synchronised trades in a premeditated manner to rig the price of the scrip of the company. Despite the efforts made by the learned counsel, it was not clear to us as to how the trades were synchronised and in what manner did the appellant create a false and misleading appearance of trading on the screen of the exchange.* ***A show cause notice is meant to contain the precise charge that is levelled against the delinquent in a concise manner so that he could reply to the same****. This is the basic requirement of the principles of natural justice. As pointed our earlier, paragraph 2 of the* ***show cause notice levelling the charge of violating Regulation 4 of the regulation is vague and we are satisfied that it violated the principles of natural justice****"*

g. *In the matter of Canara Bank and Others vs Debasis Das and others (2003) 4 SCC 557 had observed that as follows; " The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard.* ***Notice is the first limb of this principle. It must be precise and unambiguous****. It should apprise the party determinatively of the case he has to meet."*

23. I don't accept the aforesaid contentions of the Noticee and I find that the transactions of the Noticee alongwith the link it has with the scrip Company and BSB establishes that the Noticee was also involved in the price manipulation of the scrip of the Company. The Noticee has also not produced any evidence in support of denial of charges against it.

24. I have also noted the Noticee's aforesaid submission that, "*Mr. Hare Krishna Behera became our director on September 1, 2005 i.e. post the Investigation period. Thus, during the investigation period when Mr. Hare Krishna Behera was not our Director it cannot be concluded that we had any connection with the broker and the company"* The same will be dealt with elaborately in the subsequent paragraphs.

25. The Noticee further submitted that

a. *Further the trade and order log relied upon suffers from material deficiency and discrepancies:*

b. *<u>The deficiencies in the trade and order log are as follows</u>:*

(i) *The trade and order log does not provide the order time, price and quantity.*

(ii) *There are several such trades where the counterparty details are not given, to give a few instances, in trade nos 3 -7 (10/sept/2004), 34-35 (15/sept/2004), 40-43 (16/sept/2004), 348- 375 (24/sept/2004), 413 - 419 (5/Oct/2004), 487 – 492 (12/Oct/2004), 500-548 (14/Oct/2004), 694 -703 (1/nov/2004),785-786 (10/Nov/2004), 855-857 (18/nov/2004).*

c. *<u>The discrepancies on the trade and order log are as follows</u>:*

(i) *the trade time in a particular trade appears erroneous. To give a few instances:*

Trade no	***Trade date***	***Trade time***
1.	*7/09/2004*	*03:27:12*
		03:27:20
8	*10/09/2004*	*12:43:58*
		12:44:18
13	*13/09/2004*	*11:53:50*
		11:54:20
30	*14/09/2004*	*02:58:11*
		02:58:30

From the aforementioned data it is clear that the trade time in a particular given transaction is different. There can be a variation in the order time which depends upon the time the order is placed at but the trade time for a trade has to be the same as it is the time when the orders get executed.

(ii) *Further, there is discrepancy in the sequencing of the order numbers. For instance:*

Tradeno.	***Trade date***	***Order No.***
1	*07/09/2004*	*8425*****
3-12	*10/09/2004*	*81134*****
13-29	*13/09/2004*	*87222*****
30-33	*14/09/2004*	*90203*****
34-35	*15/09/2004*	*84250*****

40-43	*16/09/2004*	*87222******

There is discrepancy in the sequencing of the order numbers. In a proper trade and order log the order numbers should appear in an ascending manner in accordance to the order date and time. However, in the present case there order numbers appear erratic and are not in a proper sequence.

d. *Further there appears to be discrepancy in the order numbers where the order numbers in a particular trades are not in sync with the each other for instance:*

Trade no.	***Order no.***	***Counterparty Order No.***
131 - 156	*7820*****	*8722*******
379 - 383	*8722****	*9020******
736-744	*7820****	*8113*****
745-783	*7522****	*8722****

e. *It is not possible that the order numbers in a particular trade could be at such variance where one order in a trade could begin with 7820***** and in the same trade the counterparty order could begin with 8722****.*

f. *In this context we invite your attention to the Order dated January 20, 2010 passed in the matter of M/s Subh Stock Broking Private Ltd, by SAT interalia holding that , "….. that order no.330 is shown to have been placed at 12:33:42 hours whereas order no. 300 is shown to have been placed at 12:38:04 hours. There are a large number of discrepancies of this nature. While the order numbers are in sequence, the time at which they are shown to have been placed on the system does not appear to be correct. A later order is shown to have been placed earlier in point of time than as order placed earlier. This, in our view, should not happen. ……….We are satisfied that the principles of natural justice were violated".*

g. *Thus, there appears to be discrepancy in the trade and order log making the same unreliable. The instances given in the paras above are only illustrative, the entire trade and order log is itself unreliable. Such half baked data the veracity of which is patently suspect cannot be the basis for imposing penalty on us. Any reliance on the same would be opposed to law.*

26. In regards the Noticee's aforesaid submissions, I note that the revised trading data/details were forwarded to the Noticee as "Annexure A" vide Notice of Inquiry dated February 22, 2011 after which the Noticee was given one more opportunity of hearing which was scheduled for March 10, 2011 for the Noticee to make further submissions, wherein the Noticee did not make any further submissions. Further, the Noticee has neither raised

any further discrepancies in the trading data thereafter nor disputed any its trades.

27. The Noticee further submitted that

a. *With regard to the observations in para 2 of the Notice, it is denied that the transactions carried out by us could have influenced the price/ volume of the scrip of the Company. We had independently transacted through our broker BSB. We at the time of carrying out transactions were not aware of the identity of the Other Brokers who had also transacted during the Investigation Period. We were also not aware of the identity of the counter party clients or the nature of their transactions in the scrip of the Company.*

b. *It is denied that we were aware of any scheme of price manipulation that may have been formulated by the BSB as alleged. It is denied that we were aware of whether BSB was, aided by or had acted in collusion with, the Other Brokers as alleged. It is submitted that we have no role whatsoever, in the scheme as may have been formulated by BSB. We are not aware of any transactions carried out by BSB in the scrip of the Company, in its own name. As far as we are concerned we have transacted independently in the scrip of the Company and the purchases as well as the sales of the shares of the Company have been carried out in our name. It is submitted that purchases that may have been made off market and subsequent sale on market does not indicate any fraudulent intent. In the present case the Notice fails to demonstrate that transactions carried out by us were in a manner that had led to price / volume manipulation. It may be noted that it is not the case that we have transacted amongst the other clients who had also transacted in the scrip of the Company. Further, simply because of common address and directors as that of the Company and the brokers, is no indication that we were used as "front company" as alleged. We are not aware of whether BSB had acquired any shares of the Company neither are we aware of its sale transactions in the same. The transactions carried out by us have no connection with those that may have been carried out by BSB or Other Brokers and their clients. It is submitted that we have not sold shares of the Company with the intention of influencing the price of the same in collusion with any brokers, as alleged. Further we are not aware of the identity of the entities who purchased the shares from us and then they may have subsequently sold their holdings in the market as alleged. As far as we are concerned we have not executed any transactions of such nature. We have transacted in the ordinary course with no intention of fraudulently influencing the price of the scrip of the Company.*

c. *We have transacted at the prevalent market price of the exchange and not with the any fraudulent intention of selling our shares at low prices to influence the price/ volume, as alleged. It is submitted, the transactions were not continuous in nature, over a period of 5 months. Further our transactions were genuine, delivery based and were not square off trades. Thus, the transactions carried out by us could not have influenced the price/ volume of the scrip of the Company.*

d. *With regard to the observations in para 3 of the Notice it is denied that we had any role in manipulation of price or volume. It is denied that we are linked /connected to the broker and the company. The allegation of such linkage is erroneously* *inferred from an observation of our director Mr. Hare Krishna Behera who was also the Director of the scrip company. It is submitted that Mr. Hare Krishna Behera was appointed as our director on September 1, 2005 i.e. much after the investigation period. Thus during the investigation period when Mr. Hare Krishna Behera was not our Director it cannot form a basis for drawing any alleged connection with the broker and the company. Further, a common address cannot establish any form of alleged connection with the company.*

e. *It is submitted that based on some relationship and common addresses it cannot be concluded that we had transacted with a fraudulent intent. The Notice fails to demonstrate in what manner were we a part of alleged scheme. It does not show that we had in any manner transacted with a particular set of clients of particular brokers or that we had transacted in any fictitious manner. Simply based on alleged connection and common address, it cannot be concluded that we had a manipulative intent.*

f. *We have transacted through the broker BSB and it is denied that we had any nexus with BSB. The allegation of us being a "front company" is baseless and without any concrete evidence. It is denied that we had held shares for or on behalf of BSB. It is denied that we and our directors had aided BSB in any manner whatsoever. There is nothing in the Notice that shows that we were holding shares of the Company on behalf of BSB as alleged. It is denied that we were an integral part of any scheme that was devised. The charge in the Notice is baseless without any evidentiary proof.*

g. *In the circumstances as explained, it cannot be concluded that our directors could be held liable under the provisions of Section 27 of the SEBI Act, 1992, for an offence which we have not committed. The notice fails to demonstrate that we had committed any offence and the basis of the charge itself is erroneous. There is nothing concrete in the Notice that could establish we were connected with the brokers and had manipulative intent.*

h. *With regard to para 4 of the Notice, it is denied that we and our directors had facilitated BSB and Other Brokers to off load their holding. It is denied that we and our directors had indulged in an act which created false or misleading appearance of trading in the scrip of the Company. It is denied that we and our directors acted through our broker BSB.*

i. *With regard to the violation of the provisions of regulation 4 (2)(a) of the FUTP Regulations, it is denied that we have indulged in any act which creates a false or misleading appearance of trading in the securities market.*

j. *With regard to the violation of the provisions of regulations 4 (2)(e) of the FUTP Regulations, it is denied that we have indulged in any act or omission amounting to manipulation of the price of the security.*

k. *It is submitted that on a careful perusal of the Regulation 4 it is clear that element of deceit is an underlying factor in the transactions. A genuine transaction by itself cannot attract the regulation though such a transaction had resulted in influencing the price of the scrip. It is submitted that in Regulation 4, the intention of the party is relevant. If one is to be charged for the fraudulent and unfair trade practices* *stated in Regulation 4, it is absolutely necessary to prove that the person had acted intentionally.*

l. *It is submitted that charge of fraudulent and unfair trade practices under Regulation 4 is a serious charge. In the instant case, as demonstrated hereinbefore there is no evidence at all that when we were trading on behalf of our clients, we were acting in collusion, with a view to carry out fraudulent and unfair trade practices in the scrip.*

In this context with regard to the nature of evidence required to sustain the charge of fraudulent and unfair trade practices, your attention is invited to the Order dated 22-10-2001 of Hon'ble Securities Appellate Tribunal in the case of Sterlite Industries Limited vs SEBI (2001)34 SCL 485(SAT-Mumbai) "In this context it is to be noted that Chairman holding the Appellant guilty of indulging in price manipulation has stated that "creation of false market and <u>price manipulation is a very serious offence</u>". Evidence merely probabalising and endeavouring to prove the fact on the basis of preponderance of probability is not sufficient to establish such a serious offence of market manipulation. When such a serious offence is investigated and the charge is established, the fall out of the same is multifarious. The impact of such an adverse finding is wide especially in the case of a large public company having large number of investors. The stigma sticks and it also hurts, not the company alone, but its shareholders as well. "Not all the King's horses and all the King's men" can ever salvage the situation. Mere conjunctures and surmises are not adequate to hold a person guilty of such a serious offence." The extent of proof required to hold the delinquent guilty has been explained by the Hon'ble Supreme Court in Bank of India v. Degala Surya Narayana (AIR 1999 SC 2407). The Court held:
"strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and objectively may arrive at a finding upholding the gravamen of the charges against the delinquent officer. Mere conjuncture or surmise cannot <u>sustain the finding of guilt even in departmental enquiry proceeding</u>." (emphasis supplied)

In the Notice it has not been specified as to how and in what manner have we influenced the price. The notice being vague, being based on incorrect facts and the trade and order log itself being defective and unreliable the charges can also not sustain. It is submitted that as a result of execution of transactions in the scrip we have not made any disproportionate gain or gained unfair advantage. Further we have also not caused any loss to investors or group of investors. Since we have not violated the provisions of FUTP Regulations and the Act and we have not indulged in any fraudulent and unfair trade practices relating to securities market, imposition of penalty under section 15HA of SEBI Act 1992 is not warranted.

It is submitted that an inquiry under section 15 I is justified only if there is a prima facie contravention of the provisions of law specified in section 15A to 15 HB, since there is no prima facie finding, of any violations of the law backed up with material in support, no inquiry is justified. The notice therefore is unwarranted.

28. In regards the Noticee's aforesaid submissions, I note that the Noticee's transactions should not be viewed in isolation but as part of the entire

scheme of the price manipulation wherein the Noticee was also involved. The Noticee has also claimed that in an event where purchases that have been made off market and subsequent sale on market does not indicate any fraudulent intent. I don't agree with the Noticee's explanations herein, considering the background of the case. I also don't agree with the Noticee that the Notice fails to demonstrate that transactions carried out by the Noticee led to price/ volume manipulation. I also note that it was because of the collective efforts of the Noticee and others along with BSB that the scrip witnessed price manipulation and huge trading volume without any justification for the same. I also note that the SCN describes the price manipulation scheme and hence don't accept the Noticee's contentions regarding the Notice failing to demonstrate in what manner the Noticee was part of the scheme. The pattern of Noticee's trades along with the links with the other entities specifies the involvement of the Noticee in the price manipulation of the scrip of the Company. Therefore, I don't find the aforesaid explanations of the Noticee satisfactory.

29. I have also noted the contentions of the Noticee that "*It is submitted that Mr. Hare Krishna Behera was appointed as our director on September 1, 2005 i.e. much after the investigation period. Thus during the investigation period when Mr. Hare Krishna Behera was not our Director it cannot form a basis for drawing any alleged connection with the broker and the company.*" And the same shall be dealt with in the subsequent paragraphs.

30. I find that the price of the scrip of the Company witnessed a sharp rise from ₹ 2.00 to ₹ 170.20 and the transactions done by four brokers including BSB constituted 83.30% of the total traded volume in the scrip of the Company at CSE. The Noticee had traded through BSB, who is the main broker behind the alleged scheme of price manipulation as described above. The Noticee's Director, Shri Hare Krishna Behera is also the Director of the scrip Company. Moreover, the Noticee also shares the same address as that of the scrip Company. Therefore considering the trades of the Noticee along with the connection it shares with BSB and the Company in the background of the entire price manipulation scheme, I find that the Noticee was an

integral part of the scheme of price manipulation. This scheme indeed facilitated price manipulation of the scrip of the Company and ultimately generated huge volumes in the scrip at CSE and also hampered normal price discovery.

31. It is of no doubt that there has been a manipulation of price of the scrip of the Company and the price rise as well as the huge trading volume mentioned above without any change in the fundamentals of the Company quite establishes the same. Further, there was also false and misleading appearance of trading in the scrip of the Company, as the trading was not genuine trading but only done to facilitate the concerned entities in achieving their own ends and avail tax benefit. Therefore the trading as well as the price rise have been artificial.

32. The question is whether the Noticee is guilty of manipulating the price of the scrip and of creating false or misleading appearance of trading in the securities market. The four brokers whose transactions are involved have contributed to 83.30% of the total traded volume in the scrip of the Company at CSE and the Noticee has traded through one of these four brokers, viz., BSB, who is the main broker behind the scheme of price manipulation as described above. Its only through such clients, BSB and the other brokers have manipulated the price of the scrip of the Company and created false or misleading appearance of trading. The relationship between the clients, brokers and Company has been brought out clearly in the preceding paragraphs. Therefore, the Noticee’s trades should not be viewed in isolation. It should be seen in coordination with the entire scheme formulated by BSB in collusion with the other brokers. The link between the Noticee and BSB and the Company makes it quite clear that it acted as the front company of BSB as part of the scheme. The trades of Noticee and other clients and brokers have helped in raising the price of the scrip which was not a genuine price rise or for that matter these trades were also not genuine trades as they were only done to achieve their own ends. Therefore, I find that the Noticee alongwith the other clients and brokers have dealt in the market in a manner that has resulted in the manipulation

of the price of the scrip of the Company and has created false or misleading appearance of trading in the securities market.

33. At this juncture, it is pertinent to mention that in case of Adjudication Proceedings initiated in respect of other client companies in the matter of G. R. Industries and Finance Ltd., wherein hearings were conducted on March 9, 2011, Mr. Pravin Panwar, Authorised Representative of the client companies and their Directors submitted that the address of G. R. Industries and Finance Ltd. was shifted to the present address on 04.05.2006 i.e. after the Investigation Period. During the Investigation Period the Company was located in Assam. Further, he also made the following submissions and requested for the same to be noted in other cases also.

"The trade data does not indicate that there was a manipulative intent as there was difference between the trade time and order time. I'm also submitting the copy of Form 32 of G.R Industries wherein it can be noted that Mr. Anil Kumar Khemka, Mr. Gopichand Banshal and Mr. Hare Krishna Behera became directors of the Company from 11.11.2005 i.e. subsequent to the period of Investigation. This submission may be noted with regards to other cases also."

34. I have examined the above submissions keeping in view the other evidences available on record. There is no dispute that Mr. Anil Kumar Khemka & Gopichand Banshal were the directors of the various client companies who have dealt in the scrip of G. R. Industries and Finance Ltd. during the Investigation Period and subsequently, as per the submissions of the Noticee became the directors of G. R. Industries and Finance Ltd. post Investigation Period. It is the own submission of the Noticee that G. R. Industries and Finance Ltd. changed its address subsequently to the address from where these client companies were operating during the Investigation Period. It is too much of coincidence that subsequent to the Investigation Period the directors & address of these client companies were adopted by G. R. Industries and Finance Ltd., in the scrip of which manipulative trades have been done by these client companies. The suspicion that the Company & clients were connected during the time of investigation period also gets deepened by the evidences otherwise available on record. Herein, I note that in the case of Adjudication Proceedings initiated in respect of the Director of the Noticee, Mr. Hare

Krishna Behera strenuously argued and submitted documents that he was appointed Director of Noticee only on 1.09.2005, *i.e.* after the investigation period. Moreover, the Noticee has also contended that "*It is submitted that Mr. Hare Krishna Behera was appointed as our director on September 1, 2005 i.e. much after the investigation period. Thus during the investigation period when Mr. Hare Krishna Behera was not our Director it cannot form a basis for drawing any alleged connection with the broker and the company.*" However, on perusal of the KYC form available with the broker, it is noted that Mr. Hare Krishna Behera has signed the KYC form of the Noticee in the capacity of Director for the trades done during Investigation Period. This creates serious doubts about the actual people in control of all these companies (clients as well as Company) during period of investigation. From the above discussions it would be appropriate to conclude that though Mr. Anil Kumar Khemka, Mr. Gopichand Banshal and Mr. Hare Krishna Behera were formally appointed directors of the Company subsequent to the Investigation Period, they were connected with the Company during the Investigation Period. Hence the submissions of the Noticee lacks merit and does in no way weaken the link between the entities involved in the entire scheme of manipulation, as discussed in the preceding paragraphs.

35. Now I deal with the submissions made by Shri Hare Krishna Behera, the Director of the Noticee. Vide letter dated September 17, 2008, he denied any violation as their motive was only to make investment and do transaction to make some gain in the market and also submitted that securities were sold and purchased in normal course. Further, vide letter dated November 22, 2010 Shri Hare Krishna Behera submitted that the charge in the Notice against him was based on factual inaccuracy and that he was appointed Director of the Noticee on September 1, 2005, *i.e.* after the Investigation Period and that during the Investigation Period when he was not Noticee's Director, he being the director of Noticee post the Investigation Period can't form any basis for drawing any alleged connection with the broker and the company. He further submitted that since he was not the director of the Noticee during the Investigation Period, it can't be concluded that he in his capacity as director be held liable. He also submitted that he adopts the

reply dated November 22, 2010 filed by the Noticee in the matter. Further, during the hearing conducted on March 9, 2011, the Authorized Representative for the Noticee's Director, Shri Hare Krishna Behera submitted Form No. 32 in support of his submissions that Shri Hare Krishna Behera was appointed Director only on 1.09.2005 and also submitted the Board Resolution dated 28.9.2004 wherein it was stated that Mr. Umesh Behera was authorized to do trades on behalf of the company. In this regard, I also note the submissions of the Noticee that "*It is submitted that Mr. Hare Krishna Behera was appointed as our director on September 1, 2005 i.e. much after the investigation period. Thus during the investigation period when Mr. Hare Krishna Behera was not our Director it cannot form a basis for drawing any alleged connection with the broker and the company.*"

36. In view of the above, I note that as elaborated in paragraph no. 34, on perusal of the KYC form available with the broker, I note that Mr. Hare Krishna Behera has signed the KYC form of the Noticee in the capacity of Director for the trades done during Investigation Period. This creates serious doubts about the actual person in control of the Noticee during period of investigation. Further, this also creates serious doubts regarding the aforesaid submissions of the Noticee as well its Director, Mr. Hare Krishna Behera. Therefore, it would be appropriate to conclude that though Mr. Hare Krishna Behera would have been formally appointed director of the Noticee subsequent to the Investigation Period, he was definitely connected with the Noticee and the Company during the Investigation Period and was controlling its affairs. Mr. Hare Krishna Behera has signed the KYC form of Noticee in the capacity of the Director with the broker and therefore, I don't accept the Noticee's as well as its Directors submissions. Hence the aforesaid submissions lack merit and does in no way weaken the link between the Noticee, its Director and scrip Company. In light of the above, I find that the Mr. Hare Krishna Behera can't use the aforesaid submissions to absolve himself from the responsibility of the trades executed by the Noticee. Besides, it has to be noted that not only has Mr. Hare Krishna Behera signed the KYC of the Noticee with the broker but has become the Director of the Noticee as well as the Company post

Investigation Period. All this demonstrates the active involvement and link which Mr. Hare Krishna Behera has shared with the Noticee as well as the Company. The aforesaid factors reflect that Mr. Hare Krishna Behera was aware of the scheme of manipulation and cannot plead ignorance and shun his responsibility by submitting that he became Director of the Noticee post Investigation Period and by only relying on the extracts of the minutes of the Board Meeting of the Noticee held on September 28, 2004 wherein Mr. Umesh Behera was authorized to do the trades on behalf of the Noticee. I also note that the Board Minutes which authorizes Mr. Umesh Behera, Director to do all acts necessary to open the trading account of the Noticee with BSB and to place orders on behalf of the Noticee individually and the Member Client agreement between BSB and Noticee, duly signed by Mr. Hare Krishna Behera in the capacity of Director of Noticee are contradictory. Therefore, in view of the links between the entities involved as well as keeping in view the background of the case, I don't find the explanations of Mr. Hare Krishna Behera satisfactory to absolve him from the said violations.

37. Since, the charges of violation of PFUTP Regulations against the Noticee stand established, I hold Shri Hare Krishna Behera, Director of the Noticee, guilty of violation of the Regulations 4(2) (a) and (e) of PFUTP Regulations keeping in view Section 27 of the SEBI Act, 1992, which explicitly mentions that the directors are liable for the conduct of the company and reads as under:

27. Offences by companies.

(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

***Provided** that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.*

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any

neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation: For the purposes of this section, –

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

38. Therefore, I find the Noticee and its Director, Shri Hare Krishna Behera guilty of violating provisions of Regulations 4(2) (a) and (e) of PFUTP Regulations.

ISSUE 2: Whether the Noticee and its Director, Shri Hare Krishna Behera are liable for monetary penalty under section 15 HA of the Act?

39. Section 15 HA of the Act prescribes the penalty for fraudulent and unfair trade practices. The provisions of the section read

"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".

40. In view of the violation of provisions of Regulations 4(2) (a) and (e) of PFUTP Regulations, I find that the Noticee and its Director, Shri Hare Krishna Behera are liable for monetary penalty under section 15HA of the Act.

ISSUE 3: What quantum of monetary penalty should be imposed on the Noticee and its Director, Shri Hare Krishna Behera, taking into consideration the factors mentioned in section 15J of the Act?

41. Section 15J prescribes the factors to be taken into account by the adjudicating officer while adjudging the quantum of penalty under section 15-I, the provisions of which read,

"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."

42. In such cases, it is difficult to quantify exactly the disproportionate gains or unfair advantage enjoyed by an entity and the consequent losses suffered by the investors. I note that the material available on record also does not dwell on the extent of specific gains made by the Noticee and its Director, Shri Hare Krishna Behera. Suffice to state that keeping in mind the practices indulged in by them, a pre-determined agenda was achieved in that the trading in the scrip of the Company was in a manner meant to create artificial price and volume, which is an important criterion capable of misleading the investors while making investment decisions. Besides, this kind of activity seriously affects the normal price discovery mechanism of the securities market and also erodes the confidence of the investors in the orderly behaviour of the securities market. People who indulge in manipulative, fraudulent and deceptive transactions, or abet the carrying out of such transactions which are fraudulent and deceptive, should be suitably penalized for the said acts of omissions and commissions. It is of utmost importance that a sense of fair play be maintained in the market so that innocent investors do not find themselves at the receiving end of market manipulators.

43. It has already been established that the Noticee and its Director, Shri Hare Krishna Behera have violated Regulations 4(2) (a) and (e) of PFUTP Regulations.

44. Considering the facts and circumstances of the case and the material available on record and the violation committed by the Noticee and its Director, I find that penalty of ₹ 2,00,000/- (Rupees Two Lakh only) on Graceful Advisors Pvt. Ltd. (Now merged with Vayudoot Commercial Pvt. Ltd. and ₹ 2,00,000/- (Rupees Two Lakh only) on Noticee's Director, Shri Hare Krishna Behera under section 15HA of the Act would be commensurate with the violation committed by them.

V. ORDER

45. Considering the facts and circumstances of the case, in terms of the provisions of section 15HA of Act and Rule 5(1) of the Adjudication Rules, I hereby impose a penalty of ₹ 2,00,000/- (Rupees Two Lakh only) on Graceful Advisors Pvt. Ltd. (Now merged with Vayudoot Commercial Pvt. Ltd. and ₹ 2,00,000/- (Rupees Two Lakh only) on Noticee's Director, Shri Hare Krishna Behera for violation of provisions of Regulations 4(2) (a) and (e) of PFUTP Regulations.

46. The penalty shall be paid by way of demand draft drawn 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 Shri Jayanta Jash, Regional Manager, Eastern Regional Office, Securities and Exchange Board of India, L&T Chambers, 3rd Floor, 16 Camac Street, Kolkata – 700 017.

47. In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this Order are being sent to the Noticee and its Director, Shri Hare Krishna Behera and to SEBI.

DATE: MARCH 23, 2011	**P. K. BINDLISH**
PLACE: MUMBAI	**ADJUDICATING OFFICER**