BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO: EAD-2/AO/6-11/2013-14]

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

In respect of

1. **Cityon Infrastructure Pvt. Ltd. (PAN: AADCC6582H)**
2. **Nirbharant Management Consultants Pvt. Ltd. (PAN: AADCN0132C)**
3. **Bansal Supplier Pvt. Ltd. (PAN: AADCB7622F)**
4. **Mr. Ashesh Agarwal (PAN: AFBPA6437M)**
5. **Mr. Sanjeev Agarwal (PAN: AHEPA0891L)**
6. **Big Brokers House Stocks Ltd. (PAN: AACCB9811B)**

In the matter of

Rich Universe Network Limited

Background:

1. The Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an investigation into the alleged irregularity in trading in the shares of Rich Capital and Financial Services Ltd now known as Rich Universe Network Limited (hereinafter referred to as 'RUNL') and into possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 ('hereinafter referred to as SEBI Act') and various rules and regulations made there under for the period from February 01, 2010 to September 24, 2010 (hereinafter referred to as "Investigation Period").

2. The investigation inter-alia revealed that the scrip of RUNL opened at ` 56.75 on February 01, 2010, reached a high of ` 119.90 on September 02, 2010 and closed at ` 111.80 on September 24, 2010 with abnormal volume during the investigation

period. A group of entities, namely (1) Cityon Infrastructure Pvt. Ltd, (2) Nirbharant Management Consultants Pvt. Ltd., (3) Bansal Supplier Pvt. Ltd. (4) Mr. Ashesh Agarwal, (5) Mr. Sanjeev Agarwal, (6) Big Brokers House Stocks Ltd. (hereinafter referred to as the Noticee No.1 to 6 respectively and collectively referred to as "the Noticees”) were related / connected to each other in one way or other way by of common address, common directors, dealing in off-market transactions etc., and created artificial volumes / price and false or misleading appearance of trading in the shares of RUNL by indulging into reversal / circular trading among themselves in the market. During the course of investigation, the Noticees also failed to comply with the summons dated July 29, 2011 & August 01, 2011 issued by the Investigating Authority and subsequent communiqué thereto, and thereby substantially hampered the investigations in the matter.

3. The Noticees, therefore, allegedly violated the provisions of regulation 3 (a) to (d), 4 (1) and 4 (2) (a), (b), (e) & (g) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "PFUTP Regulations") and section 11C (2) & (3) of the SEBI Act.

Appointment of Adjudicating Officer:

4. In view of the above, SEBI appointed the undersigned as Adjudicating Officer under section 15 I of the SEBI Act, read with rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as ‘Adjudication Rules’) vide order dated May 08, 2012, to inquire into and adjudge the alleged violations by the Noticees under section 15HA and 15 A (a) of the SEBI Act.

Show Cause Notice, Reply of Noticees and Hearing:

5. A common Notice dated June 28, 2012 (herein after referred to as “SCN”) was issued to the Noticees under rule 4(1) of the Rules to show cause as to why an inquiry be not held against them and penalty be not imposed under section 15 HA and 15A (a) of the SEBI Act for the aforesaid violations of PFUTP Regulations and SEBI Act, alleged to have been committed by them.

6. It was inter alia, alleged in the SCN that the Noticees are related/connected to each other and RUNL in one way or the other, transferred 101,600 shares to different entities through off market and purchased 1,00,590 shares from the same entities in market (i.e. 99%) which were in the nature of reversal/circular trades. The Noticees traded amongst themselves for 1,64,570 shares and out of which there were reversal/ circular trades as evidenced by trade/order logs. Allegedly, such circular/reversal trading which were manipulative in nature as the shares were bought and sold by the Noticees in market and off- market mechanism without resulting into meaningful change of ownership, but were executed with an intent to create artificial volumes by way of misleading appearance of trading in the shares of the RUNL. The Noticees also placed orders for purchase/sale of shares of RUNL at a price above the last trade price (LTP) and influenced the price of the scrip to the extent of ` 213.85 and contributed in establishing new high prices (NHP) through first trade as well as intra- day trades in the shares of RUNL.

(a) Therefore, it was alleged that the Noticees had created artificial volumes and price in the shares of the RUNL and thereby violated the provisions of regulation 3 (a) to (d), 4 (1) and 4 (2) (a), (b), (e) & (g) of the PFUTP Regulations. The text of said regulations are produced hereunder:-

3. *Prohibition of certain dealings in securities*

No person shall directly or indirectly—
(a) buy, sell or otherwise deal in securities in a fraudulent manner;
(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made thereunder;
(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;
(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder.

4. *Prohibition of manipulative, fraudulent and unfair trade practice*
(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.
(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-
(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

(b) dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss;
(e) any act or omission amounting to manipulation of the price of a security;
(g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;

(b) Further, it was also alleged that Noticee No. 1 to 3 and Noticee No. 4 to 6, did not comply with the summons dated July 29, 2011 & August 01, 2011 respectively, issued by the Investigating Authority and subsequent communiqué for submission of information. Instead of providing the information/documents etc., the Noticees raised various objections / superfluous issues and thereby hampered the investigations substantially. The copies of summons & other communiqué of investigating Authority and the correspondence by the Noticees in this regard were enclosed as Annexures X to IV along with SCN. Allegedly, the Noticees violated the provisions of section 11 C (2) & 11 C (3) of the SEBI Act. The text of said provisions are produced hereunder:-

11C. (2) Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956(1 of 1956), it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorised by it in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.

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

7. In response to the SCN, the Noticees desired to file an application for consent order towards the allegations and requested to keep the present proceedings in abeyance until their application for consent order is disposed. An opportunity of hearing was granted to the Noticees on October 12, 2012 vide notice dated September 26, 2012. The Noticees were also informed that notwithstanding the pending application of consent order, the adjudication proceedings would continue except passing the final order on merit, which shall be passed according to the

disposal of said application. The Noticees did not appear during the hearing. The Noticees vide letter dated October 04, 2012 sought adjournment for a period of 30 - 45 days for filing reply in the matter, with a request to fix the hearing only after that. Surprisingly, vide another letter of same date the Noticees took a different stand and expressed that reply would be filed only if their consent applications are rejected by SEBI. However, in the meantime, the Noticee No. 1- 4 filed their undated replies (received by SEBI on December 03, 2012) and the Noticee No. 5 & 6 filed their reply dated December 18, 2012 & December 01, 2012 respectively, towards the allegations.

8. Subsequently, the consent applications of the Noticees were rejected and intimation to that effect was communicated to them by SEBI vide letter dated February 18, 2013. Consequent to rejection of their said applications, the undersigned granted another opportunity of hearing on March 05, 2013 vide notice dated February 21, 2013. All the Noticees vide their e-mail dated March 04, 2013 sought adjournment from hearing attributing the reasons that Noticee No. 4 is indisposed off, the place of hearing is far away, the month of March is closing month for setting the books of account etc. and requested to fix hearing after a month.

9. Considering the principles of natural justice at large extent, third opportunity of hearing was provided to the Noticees on April 10, 2013 vide notice dated March 05, 2013 with a sufficient time to appear. In respect to said notice, instead of appearing during the hearing, all the Noticees vide their e-mail dated April 10, 2013 and their letters/replies dated April 06, 2013, April 10, 2013 & April 08, 2013 inter *–alia* requested for waiver of the hearings and reiterated almost the same contentions as made earlier in their reply.

10. In view of the above, I am proceeding with the inquiry based on the written submissions, material and documents as available on record.

11. I have perused the aforesaid replies of the Noticees which are almost uniform on issues. The main submissions/contention of the Noticee towards the allegations, are produced hereunder:

(a) *SEBI had already issued similar Adjudication proceedings vide Show Cause Notice June 21, 2011 pertaining to trades in the same scrip which related to period from March 27, 2009 to August 12, 2009 alleging similar allegations, wherein the Adjudicating officer has imposed penalty against us. The said order has been challenged by way of an Appeal before the Hon'ble Securities Appellate Tribunal. SEBI had issued 1st notice on June 21, 2011 for the period March 27, 2009 – August 12, 2009 and again issued the present 2nd notice on June 28, 2012 for the period February 01, 2010 – September 24, 2010, though it can be issued with first notice for the whole period. These types of practice of SEBI much prejudice us and a principle of "Res Judicata" as well as "Double Jeopardy" is applicable.*

(b) *We are unable to submit comprehensive reply, as all the documents referred and relied upon by SEBI are not provided. Hence, it is requested to provide copies of certain documents.*

(c) *We use to invest in securities market to earn profits, and basically did jobbing transactions. We do not consider investment in the shares of RUNL on the basis of any fundamental analysis, rather decision was on the basis of performance of the scrip in terms of price. It is denied that any of our orders by themselves were manipulative in nature and created any artificial market and/or led to an increase in the price of the scrip during the period under investigation.*

(d) *We are not related to each other. We have in fact incurred losses in the course of trading in the scrip of RUNL, which SEBI has failed to consider while issuing the present SCN. Paragraph 6 of the SCN mentions KYC forms of all Noticees with respective stock brokers, however, only individual KYC has been annexed to the present SCN and other KYC's are not provided.*

(e) *It is pertinent to note, that the trading system of the BSE is anonymous and automated, it is not possible for any broker or client to identify the counter parties while placing orders or even after the order is executed.*

(f) *It is denied that their trades were circular/reversal and manipulative in nature without resulting into meaningful change of ownership. It is denied that their trades were executed with intent to create artificial volumes by way of misleading appearance of trading in the shares of the RUNL.*

(g) *The off market transactions has no ability to affect the price or volume of the scrip on the Exchange and said off market transactions cannot result into manipulation of market or create artificial volumes/price in the market.*

(h) *As regards to the allegation of non compliance of summon, it is admitted fact of SEBI that investigation order passed on July 01, 2011. Therefore, investigation can start on or after July 01, 2011, and investigation authority may call the information regarding investigation after that only. However, Investigation Department, through Letter dated June 10, 2011, direct us to provide certain information.*

(i) *The order of SEBI for initiating the investigation is forged by the investigating officer/authority. So many times we asked to provide the certified coy and other details of the orders to file an appeal before the Hon'ble SAT, but SEBI did not provide the same. In view of the aforesaid submissions, it is denied that we have failed to comply with summons as alleged.*

12. Before I proceed further on the merit of case, it is necessary to examine the preliminary objections raised by the Noticee that: (i) the principle of Res- Judicata and Double Jeopardy is applicable in the present case as the SEBI had already issued similar Show Cause Notice on June 21, 2011 pertaining to trades in the same scrip for the period from March 27, 2009 to August 12, 2009, (ii) entire documents as relied in the proceedings, are not provided to them to meet the principle of natural justice.

13. I do not agree with the contention of the Noticee as the present SCN is issued for the allegations that took place in the shares of RUNL during the for the period February 01, 2010 to September 24, 2010, and not for the period from March 27, 2009 to August 12, 2009. The different cause of action may result into different proceedings, and hence, no Res- Judicata and Double Jeopardy is applicable in the instant case.

14. Further, it is noted from the available records that all the relied and relevant documents were provided to the Noticees as Annexure I to XIV along with SCN. Therefore, the principle of natural justice is complied with and no prejudice or impediment is caused to the Noticee while filing their reply towards the allegations or defending their case.

Consideration of Issues and Finding:

15. After taking into account the allegations, replies of the Noticees and other evidences/material available on records, I hereby, proceed further to inquire the case on merit. The issues that arise for consideration in the present case are as under:

    (a) Whether the Noticees are related / connected to each other and with RUNL in any manner while dealing in the shares of RUNL?

    (b) Whether the Noticees had dealt in any fraudulent and unfair manner to create any misleading appearance of trading in order to raise the artificial volume and price of the shares of RUNL? If yes, then whether the said act of the Noticees is in violation of regulation 3 (a) to (d), 4 (1) and 4 (2) (a), (b), (e) & (g) of the PFUTP Regulations?

    (c) Whether the Noticees did not comply with the summons dated July 29, 2011 & August 01, 2011 issued by the Investigating Authority and subsequent communiqué thereto. If yes, then whether such act of the Noticees is in violation of section 11 C (2) & 11 C (3) of the SEBI Act.

(d) If yes for above, then whether the Noticees are liable for monetary penalty prescribed under section 15 HA & 15 A (a) of the SEBI Act for the aforesaid violation?

(e) If yes, what should be the quantum of monetary penalty?

16. In respect to the first issue, it is observed from the available records / Annexure III of the SCN (the KYC forms), that the Noticee No. 1- 4 are directly related to each other as Noticee No. 1-3 are the companies having same address as that of RUNL and the Noticee No. 4 is the common director of said three companies, a fact that remain disapproved by them. All the correspondence as made under the present proceedings by Noticee No. 1-3, bears the signature of Noticee No. 4 only. It is pertinent to note that the contents of the replies of the Noticee No. 1- 4 are identical in terms of date, content etc. it is observed that Noticee No. 5 is the director of the Noticee No. 6. and the reply filed by them are also uniform in terms of date, content etc. as that of Noticee No. 1- 4. The Noticee No. 5 - 6, made evasive denial only about relation/connection with each other, but did not specifically disputed on the fact of directorship of Noticee No. 5 with Noticee No. 6.

17. Further, I find from the following table as given in the SCN that the Noticee No. 4 and Shri Shashwat Agarwal CMD of RUNL are sons of Sharat Chandra Agarawal. The Noticee No. 5 and Rajeev Agarwal are sons of Krishna Kumar Agarwal. Noticee No. 5, Rajeev Agarwal and Shashwat Agarwal CMD of RUNL are directors of Noticee No. 6. It is therefore, established beyond doubt that the Noticees are connected / related to each other and to RUNL.

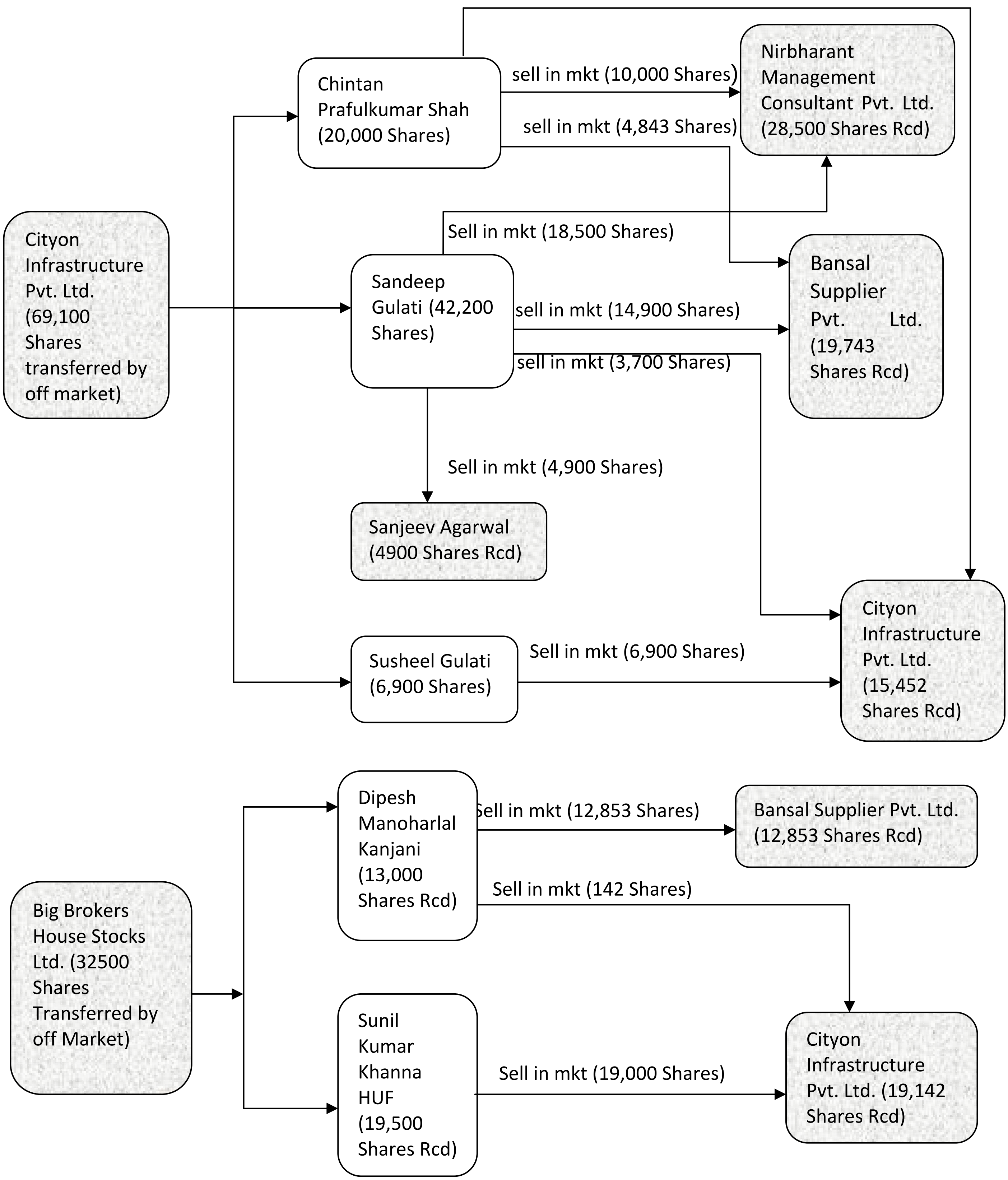
<table>
<tr><th rowspan="2">Name of Entity</th><th rowspan="2">Basis of Connection</th><th colspan="2">Market Traded (Qty)</th><th colspan="2">Off Market Traded (Qty)</th></tr>
<tr><th>Buy</th><th>Sell</th><th>Received</th><th>Transfer</th></tr>
<tr><td>Cityon Infrastructure Pvt.Ltd.(AADCC 6582H)</td><td rowspan="3">1) As per the KYC, Cityon, Bansal & Nirbharant are having the same address (7/125, C-2 Swaroop Nagar Kanpur) as that of RCFL and common Directors (Ashesh Agarwal & Gaya Prasad Gupta)
2) From the KYC it was observed</td><td>7,89,256</td><td>2,03,163</td><td>1,00,000</td><td>2,61,000</td></tr>
<tr><td>Bansal Suppliers Pvt. Ltd.(AADCB7622 F)</td><td>5,19,999</td><td>41,110</td><td>1,00,000</td><td>2,70,000</td></tr>
<tr><td>Nirbharant</td><td>4,33,268</td><td>1,96,816</td><td>0</td><td>75,000</td></tr>
</table>

Management Consultants Pvt. Ltd. (AADCN0132C)	that Ashesh Agarwal and Shashwat Agarwal (CMD of RCFL) that the name of father of both the entities is Sharat Chandra Agarwal 3) From the KYC of Big brokers house stocks Ltd. (Big), Sanjeev Agarwal & Rajeev Agarwal are sons of Krishna Kumar Agarwal. Rajeev Agarwal & Shashwat Agarwal are directors of Big. It is observed that Sanjeev Agarwal is also promoter of Big.				
Big Brokers House Stocks Ltd. (AACCB9811B)		0	20	1,22,,000	1,21,600
Ashesh Agarwal (AFBPA6437M)		1,02,284	82,067	0	0
Sanjeev Agarwal (AHEPA0891L)		71,517	72,190	0	0
Total		**19,16,324**	**5,95,356**	**3,22,000**	**7,27,600**

18. I find that during the investigation period, the shares of RUNL opened at ` 56.75 on February 01, 2010 and reached its high of ` 119.90 on September 02, 2010 and closed at ` 111.80 on September 24, 2010. During the pre Investigation period from October 30, 2009 to January 29, 2010 the price of the shares of RUNL opened at ` 79.50 on October 29, 2009 touched high at ` 173.50 on November 18, 2009 and closed at ` 59.70 on January 29, 2010 with average daily volumes of 63808 shares. During the post investigation period from September 27, 2010 to December 27, 2010 the price of the scrip opened at ` 115.50 on September 27, 2010 touched high at ` 128.90 on December 02, 2010 and closed at ` 104.90 on December 27, 2010 with average daily volumes of 27527 shares. The scrip traded at ` 23.10 on BSE on March 14, 2012.

19. I find from the above table that the Noticees have traded in significant quantities in the market and also indulged in off market transactions in large quantities. Annexure IV to VI to the SCN indicate that the Noticees transferred 101,600 shares to different entities through the off market and purchased 1,00,590 shares from the same entities in market which were in the nature of reversal/circular trades between the Noticees. The pictorial depiction of the Noticee's such trades given in the chart below:

Sell in mkt (4,852 Shares)


Chintan Prafulkumar Shah (20,000 Shares)
sell in mkt (10,000 Shares)
Nirbharant Management Consultant Pvt. Ltd. (28,500 Shares Rcd)
sell in mkt (4,843 Shares)
Cityon Infrastructure Pvt. Ltd. (69,100 Shares transferred by off market)
Sell in mkt (18,500 Shares)
Sandeep Gulati (42,200 Shares)
sell in mkt (14,900 Shares)
Bansal Supplier Pvt. Ltd. (19,743 Shares Rcd)
sell in mkt (3,700 Shares)
Sell in mkt (4,900 Shares)
Sanjeev Agarwal (4900 Shares Rcd)
Susheel Gulati (6,900 Shares)
Sell in mkt (6,900 Shares)
Cityon Infrastructure Pvt. Ltd. (15,452 Shares Rcd)
Dipesh Manoharlal Kanjani (13,000 Shares Rcd)
Sell in mkt (12,853 Shares)
Bansal Supplier Pvt. Ltd. (12,853 Shares Rcd)
Sell in mkt (142 Shares)
Big Brokers House Stocks Ltd. (32500 Shares Transferred by off Market)
Sunil Kumar Khanna HUF (19,500 Shares Rcd)
Sell in mkt (19,000 Shares)
Cityon Infrastructure Pvt. Ltd. (19,142 Shares Rcd)

20. Transferring the shares in the off market and buying back the same shares from the same entities in the above manner tantamount to circular/reversal trading as no meaningful transfer of beneficial ownership has taken place.

21. I find from Annexure VI to the SCN that the Noticees bought and sold the shares in the market for 1,64,570 shares among themselves as intra-group trades i.e. 13.10% of their total trades for 25,11,680 shares. The details of said transactions as such are not in dispute. The Noticees had repeated large numbers of trades amongst themselves with small difference in price and time between placing of their orders, clearly pointed to their complicity and manipulative / fraudulent intent in executing such trades. The Noticee No. 1 & 2 had also indulged in certain self trades / fictitious trades in the scrip of RUNL. The details are produced in the below mentioned table. Therefore, I am of the view that the Noticees, had purportedly placed the buy as well as the sale orders in the system of Stock Exchange in a reversal / circular manner in order to create artificial volume and misleading appearance of trading in the shares of RUNL.

Buy Client Name	Sell Client Name (PAN)						**Grand Total**
	Cityon Infrastructure Pvt. Ltd.	Sanjeev Agarwal	Nirbharant Management Consultants Pvt. Ltd.	Ashesh Agarwal	Bansal Suppliers Pvt. Ltd	Big Brokers House Stocks Ltd.	
Bansal Suppliers Pvt. Ltd.	3075	32546	2025	11766			**49412**
Cityon Infrastructure Pvt. Ltd.	380	791	28821	13526	36	20	**43574**
Sanjeev Agarwal	34436		10	495			**34941**
Nirbharant Management Consultants Pvt. Ltd.	19889	3198	16	1774	4031		**28908**
Ashesh Agarwal	4308	3394			33		**7735**
Grand Total	**62088**	**39929**	**30872**	**27561**	**4100**	**20**	**164570**

22. I find from Annexure VII to the SCN that the Noticees entered into buy orders at incrementally higher prices which resulted in establishing new high price (NHP) to the extent of ` 15.95 out of a total price rise of ` 30. 80 i.e. 51.79% of the total price

rise. Further, I find from Annexure VIII to the SCN that the Noticees contributed in establishing NHP to the extent of ` 6.75 out of a total price rise of ` 41.65 i.e. 16.21% of the total price rise.

23. I note from Annexure IX to the SCN that Noticees executed the trades at a price more than LTP, below LTP and at the LTP as shown under:

Name	**All trades**			**LTP Diff. > 0**			**LTP Diff. < 0**			**LTP Diff. =0**	
	Sum of LTP diff.	**Sum of Quantity**	**No of trades**	**LTP impact**	**QTY traded**	**No of trades**	**LTP impact**	**QTY traded**	**No of trades**	**QTY traded**	**No of trades**
Group-2											
Cityon Infrastructure Pvt.Ltd)	93.00	7,89,256	1,478	209.15	3,10,632	487	-116.15	75,346	363	4,03,278	628
Nirbharant Management Consultants Pvt. Ltd.	45.45	4,33,268	930	139.80	1,36,648	294	-94.35	87,541	205	2,09,079	431
Ashesh Agarwal	37.05	1,02,284	243	61.15	24,050	75	-24.10	29,087	43	49,147	125
Bansal Suppliers Pvt. Ltd	30.70	5,19,999	228	35.00	2,71,433	108	-4.30	59,093	27	1,89,473	93
Sanjeev Agarwal	7.65	71,517	117	27.65	38,214	34	-20.00	6,837	55	26,466	28
Total Group-2	**213.85**	**19,16,324**	**2,996**	**472.75**	**7,80,977**	**998**	**-258.90**	**2,57,904**	**693**	**8,77,443**	**1,305**

24. I note that out of total 19,16,324 shares traded by the Noticees, there were 7,80,977 shares which were executed by them at a price more than the LTP through 998 trades. The total trades by the Noticees had an aggregate LTP impact of ` 213.85.

25. From the foregoing findings and observations, I conclude that the Noticees are related/ connected to each other and with RUNL, had traded in the scrip of RUNL in off market and on market in a fraudulent and manipulative manner by indulging in circular / reversal trades. They had contributed in artificial price increase in the scrip of RUNL by placing the buy orders at incrementally higher prices and thereby establishing NHP much higher than the LTP. The Noticees had also indulged in

creating artificial volume and misleading appearance of trading by trading amongst themselves in order to attract gullible investors to invest in the shares of RUNL. It is therefore, established beyond doubts that the Noticees violated the provisions of regulation 3 (a) to (d), 4 (1) and 4 (2) (a), (b), (e) & (g) of the PFUTP Regulations. The said violations makes the Noticees liable for monetary penalty under section 15 HA of the SEBI Act which reads as follows:

15HA. Penalty for fraudulent and unfair trade practices.

If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

26. It was further alleged in the SCN that the Noticees did not comply with the summons dated July 29, 2011 & August 01, 2011 and subsequent communiqué thereto, issued by the Investigating Authority, I have perused available records i.e. Annexure X to XIV of the SCN and the undisputed facts. I find from the documents available on record that SEBI appointed vide order dated July 01, 2011 Shri Suresh Gupta, Chief General Manager in accordance with Section 19 read with Section 11 and 11C of the SEBI Act as the Investigating authority, to investigate into the transactions in the securities of RUNL and submit a report at the earliest. The Investigating Authority issued a summon dated July 29, 2011 to Noticee Nos.1 to 3 and summon dated August 01, 2011 Noticee Nos. 4 to 6 requiring them to provide certain information/necessary documents as indicated in the annexure attached thereto, on or before August 16, 2011.

27. The summons required the Noticees to furnish various information and documents, the brief of which are mention below:

a. Name, address, PAN and other contact details.
b. Details of directorship in various companies.
c. Details of the promoters/directors.
d. Details of Shareholding in RUNL on various dates
e. Details of trading in various shares, date of acquisition of shares, mode of acquisition, payment details, demat and bank account details etc.

c. Details of market and off market transactions in the shares of RUNL and settlement of payments.

d. Details of reasons for dealing in the shares of RUNL, relation / connection with RUNL and with other entities.

e. Overall gain / loss under the transactions, Bank Account statement for the said transactions etc.

28. I find that the above information and documents as required by the Investigating Authority are critical for the conduct and timely completion of the investigation. However, instead of providing the said information, the Noticee No. 1- 4 vide letter dated August 12, 2011 and Noticee No. 5- 6 vide letter dated August 16, 2011, asked the Investigating Authority to provide the copy of order passed by the SEBI/Board, appointing the Investigating Authority. The SEBI/office of Investigating Authority vide letter dated September 30, 2011, informed the Noticees that the investigation in the matter has been ordered in writing by the Competent Authority of Board, and the Board has the powers to call for information under Section 11(2) of the SEBI Act. It was mentioned that the competent authority appointed Shri Suresh Gupta, CGM as the Investigating Authority and further advised to furnish the required information/documents within a period of 7 days.

29. The Noticees did not furnish the information/documents as required under the aforesaid summon. However, they vide letter dated October 11, 2011 *inter-alia* asked for a copy of order passed by the Board appointing Investigating Authority on the basis of which the investigations started and summon was issued to them. The Noticees submitted that they desired to file an appeal before the Securities Appellate Tribunal against the said order. From the said submission of the Noticee, it is abundantly clear that their intention of not providing the information sought for by the Investigating Authority, was to hamper the Investigation ordered by the SEBI.

30. The SEBI / Investigating Authority vide letter dated October 20, 2011, provided a copy of proceedings of Investigating Authority's appointment dated July 01, 2011,

and again reminded the Noticees to furnish the information/documents as sought vide aforesaid summons, within a period of 7 days. Despite the receipt of aforesaid copy of appointment of Investigating Authority, they did not furnish the required information/documents, rather the Noticee No. 1- 4 vide letter dated October 28, 2011 and Noticee No. 5 & 6 vide letter dated November 02 & October 31 of 2011 again raised various objections in furnishing the information such as the authenticity of the said appointment stating that it was a photocopy and not a certified copy/attested copy. The Noticees reiterated their desire to file appeal before Securities Appellate Tribunal against the said order.

31. I note that the Noticees did not dispute the details of summons/communication etc. leading to the allegations as shown in the SCN, but repeatedly contended that the certified copy of order passed by the Board/SEBI under section 11 C (1) SEBI Act for appointing Investigating Authority, was not provided to them which curtailed their statutory right of appeal before the Securities Appellate Tribunal. The Noticee also went upon saying to the extent that the order of appointment of Investigating Authority is fabricated. In this regards, I recall that in another proceedings decided by me, RUNL also made similar contentions for not complying with the summons issued to them by the Investigating Authority.

32. In my opinion, the above undisputed facts and the nature of replies of the Noticees towards the summons / communiqué of the Investigating Authority, apparently indicates their intentional non compliance of summons with the malafide motive to hamper the investigations. Since, the Noticees are associated with / dealing in the securities market, it is their duty to co-operate with the regulator; however, it was not so done by them. Further, it is not the case that the required information/documents were not available with them, but they throughout made a plea to file an appeal before the Tribunal against the investigating order. Evasively arguing that they wanted to file an appeal without setting forth the reasons as to how they are aggrieved by such appointment of Investigating Authority or why they are having any suspicion of credibility of such appointment, can not absolve them from the liability for gross unheeding the regulator. No doubt, they can avail

opportunity of an appeal, but the regulatory mandate of furnishing of documents/information under law cannot be overlooked by them. Such continued vexatious adamant approach by them during the investigation shows their malafide intentions to disregards the process of law**.**

33. Therefore, in light of the above facts and circumstances of the case, I am of belief that the Noticee No. 1 to 3 and Noticee No. 4 to 6, did not comply with the summons dated July 29, 2011 & August 01, 2011 and subsequent communiqué thereto, issued by the Investigating Authority. Certainly, such act of non compliance resulted into an impediment in furtherance of investigations and thereby they have violated the provisions of section 11 C (2) & 11 C (3) of the SEBI Act. The said violations makes the Noticees liable for monetary penalty under section 15A (a) of the SEBI Act reads as follows:

15A. Penalty for failure to furnish information, return, etc.-

If any person, who is required under this Act or any rules or regulations made hereunder,-

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

34. While determining the quantum of penalty under section 15 HA and 15A (a) of the SEBI Act, it is important to consider the factors stipulated in section 15J of the SEBI Act, which reads as under:-

15J - Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of investors as a result of the default;
(c) the repetitive nature of the default.

35. It is not possible from the information/details available with me to arrive at the figures of profit made by the Noticees or the loss suffered by the investors. Further, there is nothing on record to show that the Noticees have repetitively indulged in such kinds of violations. However, as mentioned in this order above, the Noticees on their own submissions admitted that adjudication orders were passed against

them by SEBI for their dealing in the scrip of RUNL in a previous period. Taking into consideration of the seriousness of manipulation, the enormous numbers of aforesaid manipulative transactions and the adverse impact of such acts in disturbing the equilibrium of the market appropriate penalty need to be imposed on the Noticees.

36. Further, I cannot ignore the disregardful act and conduct of the Noticees towards the regulator throughout the investigation as if submission of the information might unearth more serious defaults committed by the Noticees. Therefore, a justifiable monetary penalty is required to be imposed upon the Noticees to secure the ends of justice for the violation of section 11 C (2) & 11 C (3) of the SEBI Act.

37. Here, I refer the case of M/s Kajol Impex Ltd. vs. SEBI (Appeal No. 167 of 2009 decided on October 10, 2009) wherein, the Hon'ble Securities Appellate Tribunal while upholding the monetary penalty of ` 25,00,000/- for the non compliance of the summon, made following observation;

"It is, thus, clear that by not furnishing the requisite information and by not appearing before the investigating officer the appellant hampered the investigation which is , indeed, very serious matter. The market regulator under the provision of the Act will not be able to perform its statutory functions and duties if the person connected with the securities market throttle the investigations by not responding to the summons issued to them."

Order:

38. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section15 I of the Act and rule 5 of the Adjudication Rules, I hereby impose a penalty of ` 5,00,000/- (Rupees Five Lakhs only) on each of the Noticees aggregating to ` 30,00,000/- (Rupees Thirty Lakhs only) under the provisions of section 15 HA of the SEBI Act for the violation of PFUTP Regulations and ` 10,00,000/- (Rupees Ten Lakhs only) on each of the Noticees aggregating to ` 60,00,000/- (Rupees Sixty Lakhs only) under the provisions of section 15 A (a) of the SEBI Act for the violation of section 11 C (2) & (3) of the SEBI Act respectively. I am of the view that the said penalty is commensurate with the violations committed by them.

39. The Noticees shall pay the said amount of penalty by way of demand draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, within 45 days of receipt of this order. The demand draft shall be forwarded to the Chief General Manager, IVD - 5, Securities and Exchange Board of India, SEBI Bhavan, Plot No.C4-A, “G” Block, Bandra Kurla Complex, Bandra (East), Mumbai–400 051.

40. Copy of this order is being sent to the Noticees and also to the SEBI, in terms of rule 6 of the Adjudication Rules.

Date: May 30, 2013	**P. K. KURIACHEN**
Place: Mumbai	**ADJUDICATING OFFICER**