BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. - SRP/RK/AO: 178-183/2011]

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 AND UNDER SECTION 23 I OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF THE SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005

In respect of:

Mohammedyunus Mohammedhabib Sareshwala	**PAN: APXPS4187C**
Saleha Yunus Sareshwala	**PAN: AGSPS5490C**
Taskeen U Sareshwala	**PAN: ADFPS9359A**
Vajiha Talha Sareshwala	**PAN: ANVPS6230J**
Juveria Puthawala	**PAN: ABHPP4161F**
Aaliya Sareshwala	**PAN: AEDPS4684M**

In the matter of Parsoli Corporation Limited

BACKGROUND IN BRIEF

1. The Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) conducted investigations into the alleged irregularities in the affairs, trading and dealings in the shares of M/s. Parsoli Corporation Limited (hereinafter referred to as '**Company/PCL**') whose shares witnessed abnormal increase in the price and volumes traded during the period March 11, 2005 to July 18, 2005 at the Bombay Stock Exchange Limited (hereinafter referred to as **'BSE'**).

2. The investigations, prima facie, revealed that Mr. Zafar Sareshwala (Managing Director of PCL), Mr. Uves Sareshwala (Joint Managing Director of PCL) and other promoters of the Company who were related to these directors, namely, (i) Mohamedyunus Mohammedhabib Sareshwala, (ii) Saleha Yunus Sareshwala, (iii) Taskeen U Sareshwala, (iv) Vajiha Talha Sareshwala, (v) Juveria Puthawala and (vi) Aaliya Sareshwala (these six entities are hereinafter jointly referred to as **"promoters/ Noticees'**), had made misleading corporate announcements and furnished untrue information to the stock exchange. The Noticees and directors of the Company are closely related to each other and they, acting in concert, have transferred their stake in the Company in off-market deals to their connected/associated entities and acting in connivance with them indulged into manipulative and unfair trade practices to create artificial trading volumes in the scrip and to manipulate its price and ultimately to off-load their stake in the market at such manipulated prices. Therefore, it is alleged that the Noticees, acting in connivance with each other and the directors and other associated/connected entities have violated the provisions of regulations 3, 4(1) and 4(2)(e) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as **'PFUTP Regulations'**) which, if established, makes them liable for penalty under section 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **'SEBI Act'**).

3. It was also observed during the investigations that the alleged off-market transactions entered into by the Noticees in the shares of PCL during the investigation period were not in the nature of 'spot delivery contracts' as defined under section 2(i) of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as **'SC(R) Act'**), therefore, it is also alleged that the Noticees have violated the provisions of sections 13 and 16 read with section 18 of the SC(R) Act which, if established, makes them liable for penalty under section 23H of the SC(R) Act.

APPOINTMENT OF ADJUDICATING OFFICER

4. Shri V. S. Sundaresan was appointed as Adjudicating Officer under section 15 I of the SEBI Act read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 to inquire into and adjudge under section 15HA of the SEBI Act, the alleged violation of the provisions of the PFUTP Regulations and under section 23I of the SC(R) Act read with rule 3 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as 'Adjudication Rules') to inquire into and adjudge under section 23H of the SC(R) Act the alleged violation of the provisions of the SC(R) Act. Consequent to the

transfer of Shri V. S. Sundaresan, the undersigned has been appointed as Adjudicating Officer.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. A common Show Cause Notice bearing reference No. EAD-1/SRP/RK/189653/2010 dated January 5, 2010 (hereinafter referred to as **'SCN'**) was issued to the Noticees to show cause as to why an inquiry be not held against them and penalty be not imposed under –
   a) section 15HA of the SEBI Act for the aforesaid alleged violations of the provisions of the PFUTP Regulations; and/or
   b) section 23H of the SC(R) Act for the alleged violation of the provisions of the SC(R) Act.

6. The Noticees have submitted separate but similar replies to the SCN issued to them, each vide his/her letter dated January 21, 2010. The summary of the reply of the Noticees is as under –

   - *During the enquiry into the matter by BSE the Company had informed BSE vide letter dated April 26, 2006 that the promoters/directors had not sold the shares but pledged those for availing financial assistance.*
   - *Vide letter dated May 2, 2006, PCL forwarded copies of various share pledge agreements entered into between the promoters and pledgees and vide its letter dated May 10, 2006 informed BSE about the circumstances under which the promoters/directors of the Company had to pledge their shares to raise funds from private financiers. (Copy of such letters was enclosed alongwith the reply).*
   - *To survive in the business, the promoters and directors of the Company pledged their shares with private financiers for a sum of ₹ 82 lakh. The promoters had to agree with all the terms and conditions of the private financiers, accordingly, the promoters handed over signed off-market delivery instruction slips without mentioning transferee's name to Kishore Janani and Manish Ajmera in respect of the pledged shares. It was agreed that the said shares would be given back to the pledgors when the loan would be repaid. Thus, the Noticees have submitted that the promoters/directors continued to be the owners of the said shares as the transaction was that of pledge and therefore it was not reflected in the shareholding pattern of the Company.*
   - *The Noticees have submitted that Kishore Janani and Manish Ajmera later dishonestly transferred these shares to other entities about which the Company or promoters/directors were not aware.*

- *In the board meeting held on November 18, 2005, the board of directors of the Company decided to reconsider the issue of dividend payout and decided to use the resources of the Company towards acquiring membership of BSE and in becoming a Depository Participant with CDSL. The Noticees have stated that this decision was duly communicated to BSE.*
- *The Noticees have submitted that the promoters/directors had not transferred 8,86,000 shares to the entities in group A as alleged in the SCN and that they are not related to the said group of six entities.*
- *The 1,27,000 shares were lent to other promoters by their friends and relatives without any financial consideration.*
- *The cheque dated May 10, 2005 for ₹ 40 lakh was deposited in the first week of June 2005 at the instruction of M/s. Amin Distributors. The Noticees have denied the allegation that they have participated in the alleged game plan with the promoters/directors to off load shares in the guise of pledge.*
- *With regard to the alleged violation of the provisions of SC(R) Act the Noticees have denied the allegation.*

In support of his above submissions the Noticees have forwarded certain documents vide letter dated January 27, 2010.

7. In the meantime, while the adjudication proceedings were in progress, the Noticees, vide application dated January 25, 2010 applied to SEBI for settlement of the matter through consent proceedings. However, these consent applications were subsequently rejected as the consent terms proposed by the Noticees were not acceptable to the concerned authority and the Noticees were accordingly informed by SEBI about the said rejection vide letter dated June 29/30, 2010.

8. Thereafter, in order to conduct inquiry into the matter the undersigned granted an opportunity of hearing to each of the Noticees on October 28, 2010. However, each of the Noticees, vide letter dated October 25, 2010 requested to postpone the date of hearing by at least seven days. Accordingly, another opportunity of hearing was granted to each of the Noticees on November 16, 2010 vide notice dated November 2, 2010. The notice was delivered to the Noticees but they did not turn up for the hearing on the said date. In the interest of natural justice one more opportunity of hearing was granted to the Noticees on January 13, 2011 vide notice dated December 23, 2010. This notice was also delivered to Noticees but no one appeared for the hearing. The Noticees neither responded to the notice nor have furnished

any reason or grounds for their non appearance. I am of the view that sufficient opportunities have already been given to the Noticees to make his/her submissions and to appear before me for the personal hearing. While each of the Noticees has filed his/her written reply, they have chosen not to avail of the opportunity of hearing. Therefore, in the facts and circumstances of the case, I am compelled to proceed with the matter on the basis of documents available on record.

CONSIDERATION OF ISSUES AND FINDINGS

9. I have carefully perused the details of allegations against the Noticees, the replies filed by each of them and the documents/evidences available on record. The allegations leveled against the Noticees are same and arise from the same set of facts and the replies filed by them are also similar therefore, I am of the view that it will be appropriate to deal with them in a single order. The issues that arise for consideration in the present case are as under:

   a) Whether the Noticees, acting in connivance with directors of PCL and other associated entities, have violated/contravened the provisions of regulation 3, 4(1) and 4(2)(e) of the PFUTP Regulations?
   b) Whether the Noticees have indulged into off-market transactions in the shares of PCL, and if so, whether it were not in the nature of 'spot delivery contract' and therefore, in violation of the provisions of sections 13 and 16 read with section 18 of the SC(R) Act?

10. Before moving forward, it would be appropriate to succinctly state the facts relevant for the purposes of the present inquiry. SEBI had conducted investigations into the buying, selling and dealings in the scrip of PCL, whose shares had witnessed abnormal increase in the price and the volumes traded on BSE during the period March 11, 2005 to July 18, 2005. Traded volume went up from 1, 93,606 shares at the beginning of the period of investigation to 7, 52,616 shares towards its end. It was found that price of the scrip opened at ₹ 14.51 on March 11, 2005, touched its period low of ₹ 12.30 on May 2, 2005 and thereafter, touched period high of ₹ 36.50 on July 18, 2005. The price rise in the scrip was to the extent of 151% in 91 trading days.

11. Mr. Zafar Sareshwala (Managing Director), Mr. Uves Sareshwala (Joint Managing Director), Mohamedyunus Mohammedhabib Sareshwala, Saleha Yunus Sareshwala, Taskeen U Sareshwala, Talha Vajiha Sareshwala, Juveria Puthawala, Aaliya Sareshwala were the promoters of the Company during the relevant period. The Noticees are closely related amongst themselves and with the directors of the Company, namely, Zafar Sareshwala and

Uves Sareshwala. The shareholding pattern as reported to the BSE for the quarters ended on December 2004, March 2005 and June 2005 is as under:

	Dec 31, 2004	**March 31, 2005**	**June 30, 2005**
Promoter's Holding			
Indian Promoters	10823500 (80.09%)	10823500 (80.09%)	10823500 (80.09%)
Foreign Promoters	-		
Persons acting in concert	1013705 (7.50%)	1013705 (7.50%)	1013705 (7.50%)
Sub total	**11837205 (87.59%)**	**11837205 (87.59%)**	**11837205 (87.59%)**
Non Promoter's holding	**-**		
Others			
PCBs	48650 (0.36%)	685741 (5.07%)	710217 (5.26%)
Indian Public	1504845 (11.13%)	947854 (7.01%)	946853 (7%)
NRIs/OCBs	124200 (0.92%)	44100 (0.33%)	20625 (12.41%)
Sub-Total	**1677695 (12.41%)**	**1677695 (12.41%)**	**1677695 (12.41%)**
Grand total	**13514900 (100%)**	**13514900 (100%)**	**13514900 (100%)**

12. However, it was observed during the investigations that there was change in actual shareholding of the promoter group entities during the aforesaid quarters and it was not reflected in the shareholding pattern reported to the exchange. Further, it was also observed that the Company made a corporate announcement regarding recommendation of the board of directors (in meeting held on July 4, 2005) to declare dividend at the rate of 10% per share to the shareholders of the Company. As per the Noticees the said decision was subsequently changed and so no dividend was disbursed to the shareholders. The details regarding the alleged off-market transfer of shares of PCL by the promoter group of PCL during the quarters ended on December 31, 2004, March 31, 2005 and June 30, 2005 are as under:

Name of the promoters/ directors	**No of shares held as on December 31, 2004**	**No of shares transferred via off market deal**	**Date of transfer**
Uves Yunus Sareshwala	1,84,800	3,12,000	1,00,000 shares on 14/03/05; 50,000 shares on 15/03/05; 31,000 shares on 17/03/05; 3,000 shares on 09/06/05; 80,000 shares on 30/6/05; 10,000 shares on 16/06/05 and 38,000 shares on 17/06/05.
Juveria Puthawala	75,100	82,100	57,100 shares on 21/05/05 and 25,000 shares on 08/06/05.
Saleha Yunus Sareshwala	1,48,200	1,09,200	90,000 shares on 21/03/05; 1,000 shares on 09/06/05; 500 shares on 18/06/05; 10,000 shares on 04/07/05; 7,700

			shares on 11/07/05.
Aalia Sareswala	72,900	72,000	17/05/05
Taskeen Uves Sareshwala	72,100	72,100	10,000 shares on 11/03/05; 19,000 shares on 17/03/05 and 43,100 shares on 21/03/05.
Umer Uves Sareshwala (minor) S/o Uves Sareshwala	62,200	62,000	10,000 shares on 11/03/05; 50,000 shares on 18/03/05 and 2,000 shares on 06/09/05.
Asma Uves Sareshewala (minor) D/o Uves Sareshwala	59,900	49,900	39,900 shares on 21/03/05 and 10,000 shares on 21/05/05.
Ahmed Zafar Sareshwala (minor) S/o Zafar Sareshwala	44,000	44,000	21/03/05.
Khadija Zafar Sareshwala (minor) D/o Zafar Sareshwala	39,700	39,700	21/03/05.
Fatema Uves Sareshwala (minor) D/o Uves Sareshwala	20,200	20,200	10,000 shares on 11/03/05 and 10,200 shares on 21/03/05.
Sumaiya Talha Sareshwala (minor) D/o Talha Sareshwala	48,000	17,100	9,000 shares on 25/04/05; 600 shares on 05/05/05; 6,000 shares on 02/06/05; 1,000 shares on 09/06/05 and 500 shares on 18/06/05.
Qudsiya Talha Sareshwala (minor) D/o Talha Sareshwala	53,100	12,500	7,500 shares on 12/05/05; 4,000 shares on 02/06/05 and 1,000 shares on 18/06/05.

13. Mr. Mohammedyunus Mohammedhabib Sareshwala transferred 90,500 shares in off-market deals during the period April - May, 2005. Saleha Yunus Sareshwala was shown holding 1,48,200 shares at the end of the quarters ended on December 31, 2004, March 31, 2005 and June 30, 2005 however, it is observed from the details of the off-market deals provided by NSDL and CDSL that 1,09,200 shares were sold by her in the months of March-July 2005. Similarly, Taskeen U Sareshwala transferred in off-market deals 72,100 shares of PCL, Vajiha Talha Sareshwala transferred 29,600 shares in off-market deals on behalf of her daughters, namely, Sumaria Sareshwala and Qudsiya Sareshwala. Mrs. Juveria Puthawala was shown holding 75,100 shares in the shareholding pattern reported to BSE however, she had transferred 82,100 shares in off market (57,100 shares on May 21 and 25,000 shares on June 08, 2005) and had closing balance of 440 shares as on June 08, 2005. Aalia Sareshwala had sold 72,000 shares in off-market deals on May 17, 2005 however, no effect

of the above off market transfers were reflected in the shareholding pattern for the quarter ended June 2005 filed by the Company with BSE.

14. The investigations has found that the total off-market deals by the promoter/ directors, including the Noticees, were for 10,44,350 shares out of which the net transfer by the promoters and directors were of 9,35,650 shares during the period of investigation. It is noted that the promoters group including the Noticees (viz. Aaliya Sareshwala, Ahmed Z Sareshwala (minor) S/o. Zafar Sareshwala, Asma Sareshwala (minor) D/o. Uves Sareshwala, Fatema Sareshwala (minor) D/o. Uves Sareshwala, Juveria Puthawala, Khadija Sareshwala (minor) D/o. Zafar Sareshwala, Mohammedyunus M Sareshwala, Saleha Y Sareshwala, Vajiha Talha Sareshwala, Sumaiya Sareshwala (minor) D/o. Vajiha Talha Sareshwala, Taskeen U Sareshwala, Umer Sareshwala (minor) S/o. Uves Sareshwala and Uves Sareshwala) have transferred in off market deals 8,86,000 shares to six related/connected entities during the period March 11, 2005 to July 18, 2005. These six entities (referred to in the SCN as Group A entities) are (i) Sayyed Mustafa (received 75,000 shares), (ii) Manish Ajmera (received 3,00,000 shares), (iii) Raju G. Shah (received 80,000 shares), (iv) Girdhar Vagadia (received 2,50,000 shares), (v) Mohammedyunus Huseinmiya Lokhandwala (received 38,000 shares) and (vi) Prathmesh Investments and Trading Private Limited / Dharmesh Seth (received 1,43,000 shares). The investigations has also found that out of the 8,86,000 shares transferred by the promoters/directors; 7,36,615 shares were in physical mode and dematerialized by them and as per information received from Pinnacle Share Registry Pvt. Ltd. (RTA to the Company), 6,63,600 shares were transferred from other shareholders to the promoters in off market deals.

15. Further, the investigations also revealed that the above said six entities are directly or indirectly associated with each other and/or with the promoters/directors of PCL. Details in this regard were provided to the Noticees in Annexure X of the SCN. Mr. Dharmesh Seth and Mr. Kishore Janani are cousins and the directors of Prathmesh Investment and Trading Private Limited (hereinafter referred to as **"PITPL"**) with which the Noticees and other promoter/directors of the Company have dealt in connection with the transactions in the shares of PCL during the period of investigation. Manish Ajmera was a sub-broker with Kishore Janani when Mr. Janani was a registered stock broker. Yatin Shah (Proprietor of M/s. Girigopal Investments) and Dharmesh Sheth were colleagues at Shriram Investment Services Limited. Sayyed Mustafa was an employee of Yatin Shah and Raju G Shah is cousin of Yatin Shah. Sayyed Mustafa and Raju G Shah have received shares from the promoters of PCL in off-market deals. Mohammed Yunus Huseinmiya Lokhandwala and

Giridhar Vagadia have also received shares of PCL from the promoters/ directors of PCL without paying any consideration.

16. In view of the above said misleading information to exchange and the circumstances relating to off-market transfer of shares of PCL, it was alleged that the promoters of the Company had acted in connivance with each other and with the directors and other connected/ associated entities as mentioned above and sold their stake in PCL in off-market deals to them and acting in connivance with each other and the said six entities created artificial trading volume in the scrip in the Exchange in order to manipulate its price and ultimately to off load their shareholding in the Company in the market at such manipulated prices. Therefore, it has been alleged that the Noticees have violated the provisions of regulations 3, 4(1) and 4(2)(e) of the PFUTP Regulations.

17. In his reply the Noticees have contended that the shares were not transferred in off-market deals by the promoters to the aforesaid entities as alleged but it were pledged with M/s. Amin Distributors and Prathmesh Investment and Trading Private Limited (PITPL) in lieu of a consideration of ₹ 82 lakh and the promoters handed over signed off-market delivery instruction slips without mentioning the name of the transferee to Kishore Janani and Manish Ajmera in respect of the pledged shares. Kishore Janani and Manish Ajmera later dishonestly transferred these shares to other entities about which the Company or promoters/directors were not aware. In support of their contention that the shares were pledged, Noticees have relied upon the copy of letters written by Amin Distributors and PITPL to promoters of PCL.

18. In this regard it is observed that during the investigations it was found on the basis of information received from Pinnacle Share Registry Pvt. Ltd (RTA to the Company) that the promoters/directors received 7,36,615 shares of PCL in physical mode from other shareholders and they dematerialized it. Zafar Sareshwala (MD of PCL) and Uves Sareshwala (Joint MD), in their statement recorded on June 03, 2009 have stated (in response to Q. 5 and 9) that:

> *"During the said period none of the persons belonging to promoter and promoter group as mentioned above, have traded in the market. Yes promoters and directors have off-market transfers by way of pledge and no sale was involved during the said period.*

All off-market transfers were in the demat mode. We have not made any off-market transfers or pledge in physical form during this period. … … …"

19. Thus, during the period of the investigation, the Noticees were holding and have transacted in shares of PCL in dematerialized form only. It has been claimed by the Noticees that they had pledged the shares with some financiers. In this regard, it is observed that one of the fundamental requirements for creation of a valid pledge is 'delivery of goods' by the pledgor so as to put the goods in effective control of the pledgee and outside the control of the pledgor. Where securities are held in dematerialized form it is not possible to 'deliver' the shares physically, therefore, the manner and procedure for creation of pledge of securities in dematerialized form has been laid down in section 12 of the Depositories Act, 1996 and regulation 58 of the SEBI (Depositories and Participants) Regulations, 1996. The law in this regard ensures that when dematerialized securities are pledged, they remain in the pledgor's beneficial ownership account or demat account but they are blocked so that they can not be used for any other transaction. As the law has laid down a procedure to be followed for creation of pledge of securities in dematerialized form therefore, it must be followed for creating a valid pledge in cases of dematerialized securities. The details of the off-market deals which were obtained from NSDL and CDSL and were provided to the Noticees along with the SCN clearly indicate change in beneficial ownership of those shares. Further, the Noticees have not produced any detail or evidence which may suggest that the prescribed procedure for creation of pledge for dematerialized securities were followed. Therefore, in light of the above facts, I am of firm view that no pledge was created.

20. With regard to the reliance placed by the Noticees upon letters written by Amin Distributors and PITPL to claim that the shares were pledged by them, I find that the Noticees have claimed that the shares of the promoter group were pledged for an amount of ₹ 82 lakh, however, the available documents indicate that in this regard only ₹ 75,01,300 were paid to the promoters and directors of PCL. It is apparent that the Noticees or directors with whom they were closely related have not made any attempt to recover the balance amount. The directors have also not provided the investigating authority with the name and address of the partners/proprietors of Amin Distributors from whom lakhs of rupees were received by promoters and directors of PCL. It is also observed that the prevailing market price as on May 06, 2005 (the date of agreement with Amin Distributors was May 07, 2005) was ₹ 14.01 and they even agreed to pledge/transfer the shares at unreasonably high rate of ₹ 20.65. Further, the agreements were either on plain sheet of paper or on letter heads and further,

the letters sent by Amin Distributers do not indicate that the said terms were agreed upon by the promoters. Thus, these circumstances also make the plea of the Noticees unreliable.

21. It is observed on the basis of analysis of the off-market transactions and the said claim of “pledge agreements” that the promoters and directors of PCL had agreements with Amin Distributors (for 5, 58,350 shares) and PITPL (for 2, 55,900 shares). However, in total they transferred 9, 61,600 shares to 17 entities and out of it 8, 86,000 shares were transferred to the six related /connected entities mentioned above. In case of PITPL, despite being a company and having separate demat account, 1,43,000 shares were transferred in the personal demat account of Shri Dharmesh Sheth (Director of PITPL). Promoters/directors of PCL stated that they provided signed delivery instruction slips without mentioning name of transferee to Manish Ajmera, Kishor Janani and his associate Yatin Shah. It has been already stated that these entities were known to the promoters/directors of PCL and were related /associated with each other. It has been admitted by the promoters that they received ₹ 75,01,300 from M/s. Amin Distributors and PITPL. I am of the view that handing over signed off-market delivery instruction slips and receiving consideration leaves no doubt that the transactions entered into by the Noticees with the counterparties were not pledge but it were off-market transfer of shares. In the circumstance it can not be accepted that they did not know about the procedure for creation of pledge held in dematerialized form or about the effect of handing over signed off-market delivery instruction slips. Thus, I am of the view that the plea of the Noticees that the shares were pledged and they were not aware about the off-market transfer of those shares of PCL from their account is in-correct and has been made only to mislead the investigations and to deny the charges.

22. In fact, as has been discussed hereinafter, the conduct of the Noticees and directors of PCL (who were related to each other) during, before and after these off-market transfers clearly indicate that the promoters/directors of PCL acted in connivance with the said six entities mentioned above to manipulate the price of the scrip. It is observed from the shareholding pattern, as reported to BSE, that promoters were holding 1,08,23,500 shares (80.09%) of PCL at the end of quarter ended on December 31, 2004. The Notices and directors of PCL have also sold large number of shares in the month of March 2005, however, this was not reflected in the shareholding pattern of the Company. Further, in the Board Meeting of the Company held on July 4, 2005 the board of directors recommended dividend at the rate of 10% per share and this information was disseminated to the stock exchange. The dividend was subsequently not declared. The Noticees have submitted that the dividend was not declared as in the board meeting held on November 18, 2005 the board of directors “revised the accounts by cancellation of dividend”. In the circumstances, it raises suspicion as to why

the dividend was recommended at the first instance. This apart, declaration of dividend is price sensitive information which is mandatorily required to be furnished to the stock exchange at the earliest. Reversal of such decision is equally price sensitive and it should have also been informed to the exchange at the earliest. The Noticees have stated in their reply that the information was disclosed to the stock exchange however, they have not submitted any evidence to support their claim, and therefore, mere *ipse dixit* of the Noticees can not be accepted. The Noticees and promoter group entities continued to transfer shares in off market deals even during the quarter ended on June 30, 2005 but these transactions were also not reflected in the quarterly shareholding report made to BSE. Further, the investigations has also revealed that out of the net transfer of 9,35,650 shares of PCL by the promoters 8,86,000 shares (94.69%) were transferred in off market deals to entities who were known to the promoters/directors of PCL and who were related/associated with each other. The entities who received shares via off-market transactions from the promoters/directors started trading in those shares in the market in large volumes. Had the deal between them was that of pledge, the Noticee and other promoters/directors should have taken legal recourse against the pledgee, when it came to there notice that Manish Ajmera and others have dishonestly transferred those shares, but they did not do so. Subsequent to receipt of letter dated April 24, 2006 from BSE asking them to explain as to why the changes in shareholding of promoters/directors was not reflected in the shareholding pattern of the Company, the promoters admitted that the shareholding pattern reported to the exchange was not correct and took the false plea that the shares were pledged and not sold. Thus, the events and circumstances discussed above leaves no doubt that the Noticees along with other promoter/directors of the Company, have acted in connivance and transferred their shareholdings in the Company to six associated entities, who indulged in synchronized trades and created huge artificial volume in the scrip in order to raise its price and ultimately off loaded the shares in the market jeopardizing the interest of investors. Such manipulative trades entered into by the said six entities, the details of which were provided to the Noticee along with the SCN is briefly mentioned below.

23. The investigation report mentions that these six entities made a total purchase of 58,47,498 shares and a total sale of 67,50,621 shares on BSE. The gross quantity of shares traded on BSE during the investigation period was 1,25,98,119 and in it the gross volume of shares traded by these six entities accounted for 24.8% of the gross volume on the exchange. Out of these trades, these six entities entered into trades with each other for 13, 04,192 shares on 45 trading days out of 90 trading days of the period of Investigation. Further, on 11 trading days, the trading between the said groups accounted for volumes in the range of 15-30% of total market volume. It is also observed that around 37% of trades among these six entities

(constituting 4,80,643 shares) were executed where buy and sell orders were placed within a gap of one minute of each other of which trades for 1,14,925 shares i.e. approximately 8.8% of the trades were synchronized as the rate and quantity of buy and sell order placed were also identical.

24. In light of all the above facts and other circumstances of the case, I am of the opinion that in collusion with others the Noticees and the said directors of the Company, employed manipulative and deceptive game plan to defraud investors and off load their stake in the Company at such manipulated prices at the cost of other investors dealing in the scrip and thereby violated the provisions of regulations 3, 4(1) and 4(2)(e) of the PFUTP Regulations. This violation makes the Noticee liable for penalty under section 15HA of the SEBI Act.

25. Another allegation against the Noticees is that the off-market transaction in the shares of PCL entered into by them during the period of investigation was in violation of the provisions of sections 13 and 16 read with section 18 of the SC(R) Act. It has been alleged that the Noticees entered into various off-market sale transactions in the shares of PCL with Giridhar Vagadia, Sayyed Mustafa, Raju G Shah, Dharmesh Sheth and others in the month of March 2005 and June 2005 (the details regarding these off-market transactions were provided to the Noticee along with the SCN). In response to a query raised during the recording of statement of Zafar Sareshwala and Uves Sareshwala on June 3, 2009 by the investigating authority regarding receipt of consideration in lieu of the shares transferred in off-market, they have stated as under:

> *"First we have given demat transfer slips to the concerned counter parties who got the shares credited in the respective demat account. We have received money in installments within 2-3 months of the said demat transfer. The promoters and directors have received a total of Rs.82 lacs from the counterparties. The complete details will be provided by June 10, 2009. The bank statement of each of the promoter / director showing receipt of money will be provided by June 10, 2009. …"*

26. A combined reading of sections 13, 16 and 18 of SC(R) Act and various notifications issued in this regard suggest that apart from transacting through or with members of recognized stock exchange, only 'spot delivery contract' can be legally entered into between parties for transacting in securities out side the exchange mechanism. Section 2(i) of the SC(R) Act defines spot delivery contract in the following manner:

> *"Spot delivery contract means a contract which provides for –*

i. *Actual delivery of securities and the payment of a price therefore either on the same day as the date of the contract or on the next day.*

ii. *Transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository."*

27. Thus, a contract for sale of shares, in order to qualify as a “spot delivery contract” must provide for actual delivery of shares and the payment of price either on the same day as the date of the contract or on the next day. The same view has also been expressed by the Hon’ble Bombay High Court in the case of *Norman J. Hamilton* v *Umedbhai S. Patel and Others* (1979)49 COMP.CAS.1(BOM.). In the instant case, the details about receipt of consideration were not furnished to the investigating authority even after there being a specific request in this regard. The Noticees have not furnished such details even before me in response to the allegations in this regard in the SCN. The Noticees in their reply have stated that:

> “… the promoters/directors had pledged the said shares with ….. who dishonestly transferred the shares without Notice and without the consent of the promoters of the Company. Further, I have never claimed that these transactions were “spot delivery contract” as prescribed under section 2(i) of SCRA. …..”

28. It has already been established in the previous paragraphs that the submissions of the Noticees that the shares were pledged is incorrect and the transactions in question were that of off-market transfer of securities. It is also evident from the above submissions that the Noticees are not claiming such transactions to be spot delivery contracts. Further, they have not produced any evidence regarding receipt of payment and delivery of shares within the time prescribed under section 2(i) of SC(R) Act. Therefore, I am of the view that the Noticees have no defense in respect of the allegation.

29. In the facts and circumstances of the case and on the basis of the material and information available on record, I am of the view that the off-market transactions entered into by the Noticees were not ‘spot delivery contracts’ as defined under section 2, sub-section (i), of the SC(R) Act. These transactions are, therefore, not exempted under section 18 of the SC(R) Act from being governed under sections 13 and 16 of the SC(R) Act and thus, are in violation/contravention of the said provisions of the SC(R) Act. The violation/contravention of the aforesaid provisions of the SC(R) Act makes the Noticees liable for monetary penalty under section 23 H of SC(R) Act.

30. Therefore, on the basis of the charges established against the Noticees, namely, Mohamedyunus Mohammedhabib Sareshwala, Saleha Yunus Sareshwala, Taskeen U Sareshwala, Vajiha Talha Sareshwala, Juveria Puthawala and Aaliya Sareshwala, I am of opinion that they are liable for imposition of penalty under section 15HA of the SEBI Act and also under section 23H of the SC(R) Act. These provisions are as under:

> ***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.*
>
> ***23H. Penalty for contravention where no separate penalty has been provided.***
>
> *Whoever fails to comply with any provision of this Act, the rules or articles or byelaws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

31. While determining the quantum of penalty under section 15HA of the SEBI Act and under section 23H of SC(R) Act, it is important to consider the following factors:
    - *(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.*

32. Regarding penalty under section 15 HA of the SEBI Act and under section 23H of the SC(R) Act for indulging in above said violations, the investigations have not revealed the unlawful gains made by the Noticees. It is also not possible from the information/details available with me to arrive at the figures for the profit made by the Noticees or the loss suffered by the investors. However, taking into consideration the nature and gravity of violations, the adverse impact of such acts of the Noticees in disturbing the equilibrium of the fair market, shaking the investors' confidence in the scrip, it is necessary that a suitable penalty is imposed on them to meet the ends of justice.

33. Therefore, based on the facts and circumstances of the case, I am of the opinion that a penalty of ₹ 2,00,000/- (Rupees two lakh only) under the provisions of section 15 HA of the SEBI Act on each of the Noticees and a penalty of ₹ 1,00,000/- (Rupees one lakh only)

under section 23 H of the SC(R) Act, on each of the Noticees shall commensurate with the violations committed by them.

ORDER

34. In exercise of the powers conferred upon me under Section 15 I of the SEBI Act and 23 I of the SC(R) Act, I impose a consolidated penalty of ₹ 3,00,000/- (Rupees three lakh only) on each of the Noticees under the provisions of section 15 HA of the SEBI Act and under section 23 H of the SC(R) Act (i.e., total penalty of ₹ 18,00,000/- (Rupees eighteen lakh only). Noticees shall pay the said amount of penalty by way of demand draft in favor of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to the Chief General Manager, IVD – ID 7, Securities and Exchange Board of India, SEBI Bhavan, Plot No.C4-A, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai–400 051.

35. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to SEBI.

Date: **March 01, 2011** | **Satya Ranjan Prasad**
Place: **Mumbai** | **ADJUDICATING OFFICER**